



REGIONAL HANDBOOK

FOR MAINSTREAMING A HUMAN RIGHTS, GENDER AND INTERCULTURAL APPROACH IN THE WORK OF IMMIGRATION AND BORDER SECURITY AUTHORITIES IN THE AMERICAS



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IMMIGRATION AND BORDER SECURITY AUTHORITIES IN
THE AMERICAS**

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EXECUTIVE SUMMARY

Multiple countries, cities, and borders in the Americas are witnessing a complex scenario of large-scale mixed migration movements and forced displacement at the intraregional level, as well as the dynamics of extracontinental migration, which have led to a significant increase in the number of migrants, asylum seekers, and refugees in the region.

Human mobility is an undeniably complex and multifaceted phenomenon with important economic, social, and political dimensions. People on the move are highly vulnerable in their countries of origin, transit, destination, and return and are often exposed to multiple forms of abuse, exploitation, violence, and human rights violations. This is much more serious in the case of people with irregular migration status, who are often the target of discrimination, racism, xenophobia, and violence, and in many cases victims of exploitation and human trafficking during travel—or even after arriving at their destination—due to their precarious situation of social vulnerability.

Today, our region faces unprecedented challenges when it comes to migration and the protection of those who are forced to flee within and outside their own countries. One of the key dynamics that the OAS is monitoring is the displacement of nearly 7.7 million Venezuelans who have left the country, the vast majority of whom have moved to other countries in Latin America and the Caribbean. Other mass movements of people in the region also warrant our attention.

Faced with the multiple challenges posed by these movements of people, this Regional Handbook for Mainstreaming a Human Rights, Gender, and Intercultural Approach in the work of Immigration and Border Security Authorities in the Americas is a roadmap for supporting the protection and assistance of migrants and refugees at the borders of the Americas, with particular emphasis on those from Venezuela.

This Handbook is the product of a rigorous literature review of handbooks, protocols, guidelines, guides, tools, research, and other documents developed on the subject in the region. This work included the identification and analysis of universal and inter-American human rights standards. It also involved a consultation process with representatives of civil society, international organizations, and authorities in the region, who provided input based on their knowledge and experience.

At the regional level, this Handbook offers practical tools for border security and immigration authorities in the Americas to enable them, based on their needs, resources, capacities, and context, to strengthen the mainstreaming of a human rights, gender, and intercultural approach in their duties of protecting and ensuring the rights of migrants and refugees, as well as in their work to prevent rights violations.

This Handbook first offers an analysis of the human rights, gender, intercultural, and intersectional approaches that, together with the human rights principles for protecting and assisting migrants and refugees at borders, should guide the operations of border officials.

In the second part, the Handbook identifies two key moments: (i) entry and reception, and (ii) return or deportation, in which the rights of persons in human mobility may be at risk. It also provides a set of recommendations that, when implemented, help to ensure the full exercise of the rights of migrants and refugees, particularly those from Venezuela.

Although the recommendations made in this Handbook are not binding, they reflect an effort to identify steps that could be taken in our region to address the diverse needs of migrants and refugees, who are increasingly exposed to situations of risk that threaten their lives and humane treatment. These recommendations, based on real cases, are also a collection of lessons learned to provide increasingly comprehensive assistance to migrants and refugees, promoting services and institutional practices that respect diversity and protect people's rights regardless of their migratory status.

GLOSSARY



Asylum seeker:

Any person who is seeking international protection. In some countries, it is used as a legal term referring to a person who has applied for refugee status or a complementary international protection status and has not yet received a final decision on their claim. It can also refer to a person who has not yet submitted an application but may intend to do so, or may be in need of international protection. Not every asylum seeker will ultimately be recognized as a refugee, but every refugee is initially an asylum seeker. However, an asylum seeker may not be sent back to their country of origin until their asylum claim has been examined in a fair procedure, and is entitled to certain minimum standards of treatment pending determination of their status. ¹



Asylum

The grant, by a State, of protection on its territory to persons outside their country of nationality or habitual residence, who are fleeing persecution or serious harm or for other reasons. Asylum encompasses a variety of elements, including non-refoulement, permission to remain on the territory of the asylum country, humane standards of treatment and eventually a durable solution. ²



Child or adolescent:

Any person under eighteen years of age, unless by virtue of the law applicable to them, majority is attained earlier. ³



Cisgender:

Cisgender people are individuals whose gender expression and/or gender identity accords with conventional expectations based on the physical sex they were assigned at birth. In broad terms, cisgender is the opposite of transgender. ⁴

1.UNHCHR. <https://www.unhcr.org/glossary#a>.

2.IOM, IOM Glossary on Migration, 2019. Available at:https://publications.iom.int/system/files/pdf/imL34_glossary.pdf

3.IACHR, Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking, 2019. Available at: <https://www.oas.org/en/iachr/decisions/pdf/Resolution-4-19-en.pdf>.

4.Amnesty International, Unprotected, AI 2019. Available at:<https://www.amnesty.org/en/documents/amr01/5675/2022/en/>.

- **Collective expulsion:**
Any measure of expulsion of a foreign person that is based on group considerations rather than on individual criteria, even if the group in question is not a large one.⁵
- **Deprivation of liberty:**
Any form of detention or placement of a person in a private or public facility under custody which that person is not allowed to leave of his or her own free will.⁶
- **Due process:**
Rights and procedures related to ensuring that the administration of justice is independent and effective. This includes putting in place laws, processes or other measures to ensure that every individual is treated fairly, reasonably and that arbitrariness is avoided. Any limitations imposed on the human rights of an individual must be based in law, necessary and proportionate.⁷
- **Forcibly separated children or adolescents:**
Any child or adolescent who has been involuntarily or forcibly separated from one or both parent(s) or from their legal guardian or habitual caregiver.⁸
- **Gender expression:**
This is “the outward manifestations of the cultural traits that enable a person to identify himself/herself as male or female, according to the patterns that, at a particular moment in history, a given society defines as gender appropriate.”⁹ This manifestation may not correspond to the gender identity that the person has assumed, but is perceived by others as associated with a particular sexual orientation or gender identity.

5. IACHR, Report on the Human Rights Situation of Refugee and Migrant Families, and Unaccompanied Children in the United States of America. OAS/Ser.L/V/II.155, 2015, paras. 102-103. Available at: <https://www.oas.org/en/iachr/reports/pdfs/Refugees-Migrants-US.pdf>.

6. OHCHR, Human Rights at the International Borders. A Trainer’s Guide, New York, Geneva, 2021. Available at: https://www.ohchr.org/sites/default/files/Documents/Publications/HR_InternationalBorders.pdf.

7. OHCHR, Human Rights at the International Borders. A Trainer’s Guide, New York, Geneva, 2021. Available at: https://www.ohchr.org/sites/default/files/Documents/Publications/HR_InternationalBorders.pdf.

8. IACHR, Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking, 2019. Available at: <https://www.oas.org/en/iachr/decisions/pdf/Resolution-4-19-en.pdf>.

9. Rodolfo & Abril Alcaraz, El derecho a la nondiscriminación por identidad y expresión de género, (México D.F.: CONAPRED 2008), 6 in: Guide for the Comprehensive Care of LGBTIQ+ Elderly Victims of Human Trafficking in Guatemala (OAS, 2019) (available in Spanish).

- **Gender identity:**
Each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth.
- **Gender-based violence:**
Violence directed against a person that affects them disproportionately because of their gender or sex. Gender-based violence can take many forms, including various forms of sexual violence and rape, and is present in all spaces and spheres of human interaction.¹⁰
- **Gender:**
Gender is a social and cultural construct based on the differences conferred by biological sex. Based on these differences, men and women are differentially socialized toward traditional ideals of male-masculine and female-feminine.
- **Human mobility:**
For the purposes of this Handbook, this concept encompasses different categories of persons in the context of mobility, at the international level, including regular and irregular migrants, refugees and asylum seekers/refugee status seekers, and returnees.
- **Immediate or primary assistance:**
Provision of assistance to any person in distress at maritime, land, or air borders, regardless of the nationality or status of the person(s) or the circumstances in which he or she is found. It includes the provision of basic necessities, safe accommodation, comprehensive health care, advice, and access to basic information on migration procedures and physical protection measures, and transfer to a safe place. Assistance should be provided unconditionally and, if necessary, should take precedence over border control, police, or other law enforcement procedures.¹¹
- **Immigration detention:**
Any deprivation of liberty for the purposes of border and migration governance.¹²

10.CEDAW Committee, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, para. 18. Available at: <https://undocs.org/Home/Mobile?FinalSymbol=CEDAW%2FC%2FGC%2F35&Language=E&DeviceType=Desktop&LangRequested=False>.

11.OHCHR and Global Migration Group, Principles and Guidelines on the human rights protection of migrants in vulnerable situations, 2018, Principle 4, Guideline 4.

12.OHCHR, Human Rights at the International Borders. A Trainer's Guide, New York, Geneva, 2021. Available at: https://www.ohchr.org/sites/default/files/Documents/Publications/HR_InternationalBorders.pdf.

➤ **Interception:**

All measures taken by a State or States, outside or within their national territory, to prevent further movement of individuals or groups of individuals for law enforcement purposes, including examination of their documentation and their vehicles/vessels, or for counter-terrorism purposes. In the context of cross-border movement, interception may involve measures to prevent or interrupt the movement of persons without the required documentation. ¹³

➤ **LGBTIQ+:**

This universal acronym stands for lesbian, gay, bisexual, transgender, intersex, queer, and other identities.

➤ **Migrant:**

Any person who is outside the social, affective, or political territory to which they belong. A migrant is specifically considered to be someone who is outside of a territory of which they are a citizen or national, regardless of migratory status, intent, and temporality. It also encompasses stateless persons and victims of human trafficking as defined by national legislations and by the pertinent international conventions. ¹⁴

➤ **Migrants in vulnerable situations:**

Migrants are in vulnerable situations when they are unable to effectively to enjoy their human rights and are at increased risk of human rights violations or abuse. Migrants in vulnerable situations may need specific human rights protection because of the situations they left behind, the circumstances in which they travel, the conditions they face on arrival, or because of discrimination based on personal characteristics, such as age, gender identity, disability or health status. ¹⁵

➤ **Mixed movements:**

This refers to people traveling together (generally in an irregular manner), using the same routes and using the same means of transport, but for different reasons. People traveling as part of mixed movements (whether women, men, children, or LGBTIQ+ people) have had to leave their homes because of violence, human rights violations, persecution, or armed conflict, or because they are looking for better life opportunities.

¹³.Taken from the definition of interception by the OHCHR in: Human Rights at the International Borders. A Trainer's Guide, New York, Geneva, 2021. Available at: https://www.ohchr.org/sites/default/files/Documents/Publications/HR_InternationalBorders.pdf.

¹⁴.IACHR, Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking, 2019. Available at: <https://www.oas.org/en/iachr/decisions/pdf/Resolution-4-19-en.pdf>.

¹⁵.OHCHR, Human Rights at the International Borders. A Trainer's Guide, New York, Geneva, 2021. Available at: https://www.ohchr.org/sites/default/files/Documents/Publications/HR_InternationalBorders.pdf.

▶ **Refugee:**

A person who is outside his or her country of nationality or habitual residence and who is unable or unwilling to return to that country owing to a well-founded fear of persecution (on account of race, religion, nationality, membership of a particular social group or political opinion - definition from the 1951 Geneva Convention). The concept may also include those persons who have fled their countries because their lives, safety, or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights, or other circumstances which have seriously disturbed public order (expanded definition from the Cartagena Declaration, paragraph III (3)).

▶ **Rescue:**

Operation to retrieve persons in distress, including imminent danger to their safety or their family group from a third party, provide for their initial medical or other needs, and deliver them to a place of safety at an international border.¹⁶

▶ **Return:**

Umbrella term to refer to all the various forms, methods, and processes by which migrants are returned or compelled to return to their country of origin or of habitual residence, or a third country This includes, inter alia, deportation, expulsion, removal, extradition, pushback, handover, transfer or any other return arrangement The use of the term “return” provides no determination as to the degree of voluntariness or compulsion in the decision to return, nor of the lawfulness or arbitrariness of the return.¹⁷

▶ **Revictimization:**

A response by public institutions or social organizations to a survivor of violence that makes the person relive the traumatic situation and reassume the role of victim.¹⁸ This time the person is not only the victim of a crime, but of the incomprehension of the system that is caring for and supposed to protect him or her. An example of revictimization is having someone repeat several times the same testimony about the violence he or she experienced.

¹⁶.OHCHR, Human Rights at International Borders, A Trainer’s Guide. 2021.

¹⁷. Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations. Office of the United Nations High Commissioner for Human Rights (OHCHR). Available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>.

¹⁸.Save the Children. Revictimización: ¿Qué es y qué sucede en el caso de los abusos a los menores? [Revictimization: What is it and what happens in the case of child abuse?]. Available at:<https://www.savethechildren.es/actualidad/que-es-revictimizacion>.

➤ **Safe space:**

A space where people can express themselves freely and in confidence about events that have happened to them in their country of origin or during their migration route and, if necessary, can self-identify as belonging to a particular ethnic group. In the case of LGBTIQ+ people (lesbian, gay, bisexual, transgender, intersex, and queer) it is also the space where they can freely question and explore their sexual orientation and/or gender expression and/or identity without fear of judgment or reprisal.¹⁹

➤ **Sexual orientation:**

Sexual orientation refers to a person's physical, romantic and/or emotional attraction towards other people. Everyone has a sexual orientation, which is part of their identity. Sexual orientation is distinct from gender identity and sex characteristics.²⁰

➤ **Smuggling of migrants:**

The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.²¹

➤ **Stigmatization:**

To regard with shame, disgrace, discredit, or disapproval. It involves penalizing, humiliating, or ostracizing individuals, groups or communities for shaming or “transgressing” the norms of their community or society²². Stigmatization can be associated with migration in a number of ways, some related to gender. For example, the stigma associated with actual or imputed sexual autonomy or gender-based violence is socially and culturally constructed around gender domination and inequality. This prejudice leads to the aggravated social exclusion of those who are, or are perceived to be, sexually active or victims and survivors of sexual violence.

➤ **Torture:**

any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.²³

19. Diálogo Diverso, “Recomendaciones en la operacionalización de la atención y referenciación de casos de población LGBTIQ+ migrantes y refugiados con especial énfasis en personas de nacionalidad venezolana sin excluir otras nacionalidades en la provincia de Pichincha,” [Recommendations for operationalizing the handling and referral of cases of LGBTIQ+ migrants and refugees with special emphasis on Venezuelan nationals, without excluding other nationalities, in the province of Pichincha], pp. 22, 2020.

20. OHCHR, Living Free and Equal, p. 18.

21. Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime (art. 3).

22. Recommended Principles and Guidelines on Human Rights at International Borders (OHCHR). Available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>.

23. Inter-American Convention to Prevent and Punish Torture (art. 2).

➤ **Trafficking in persons:**

The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.²⁴

➤ **Transgender:**

Individuals whose gender identity does not correspond to the biological sex assigned to them at birth. A transgender woman is a woman who was assigned male at birth but has a female gender identity; a transgender man is a man who was assigned female at birth but has a male gender identity. Not all transgender individuals identify as male or female; transgender can include members of third genders, as well as individuals who identify as more than one gender or no gender at all.²⁵

➤ **Unaccompanied children:**

Any child or adolescent who is traveling unaccompanied by any parent or other relatives and is not under the care of an adult who, by law or custom, bears such responsibility.²⁶

²⁴.Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

²⁵.Amnesty International, Unprotected, 2019

²⁶.IACHR, Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking, 2019. Available at: <https://www.oas.org/en/iachr/decisions/pdf/Resolution-4-19-en.pdf>.

INTRODUCTION



Objectives

In the Americas, international borders can be dangerous and risky places for people in human mobility, particularly for those in an irregular situation. Border closures, lack of identity documents, measures limiting entry to different countries, and dangers along travel routes put refugees and migrants at risk of various forms of violence and human rights violations.

The Office of the United Nations High Commissioner for Human Rights (OHCHR) has noted that at all international borders, refugees and migrants are highly vulnerable to discrimination, arbitrary decisions, privacy violations, torture, sexual and gender-based violence, and dangerous interception practices, as well as arrests and detentions.²⁷ They may be subjected to violence at the hands of both State agents and unlawful criminal groups.

In this context, migrants and refugees from different ethnic groups (Indigenous or Afro-descendants); members of the LGBTIQ+ community; people with disabilities; or women, children, and adolescents may face multiple forms of violence due to the discrimination they experience because of their specific characteristics and intersecting discrimination and/or violence.

The importance of this Handbook thus lies in providing border security and immigration authorities with useful and practical tools that will help them to: (1) identify the specific needs of the different people arriving at borders, including refugees, asylum seekers, and migrants who are rescued or intercepted by national authorities; and (2) assist these people from a human rights approach, considering their differentiated needs and the intersections of violence and discrimination they may have experienced in their country of origin or along their travel route, ensuring respect for their rights, including in the case of returns and removal. This assistance must also ensure the intersection of access to services, the enjoyment of their rights, and the referral of their cases to the competent authorities and protection systems.

27. Recommended Principles and Guidelines on Human Rights at International Borders, Office of the United Nations High Commissioner for Human Rights (OHCHR) 2021. Available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf.

This Handbook, while not binding, is an important tool for identifying the situations to which refugees and migrants in the region may be exposed, and it provides practical recommendations that, if implemented, would strengthen the respect, guarantee, and protection of the human rights of persons in mobility.

Scope of Application of the Handbook

2.1. Who is it for?

This Handbook was designed to be a practical tool for border security and immigration authorities in the countries of the Americas. It is aimed at the frontline officials or first responders called upon to ensure the protection of refugees and migrants.

2.2. How should the Handbook be used?

As a starting point, this Handbook identifies **rights of special relevance** that must be ensured for people at different stages of the migration process at international borders. The Handbook first covers the rights that must be protected, respected, and guaranteed at the time of **entry at the border**—*whether regular or irregular*—or during an operation to rescue or intercept persons who are in transit or entering the destination country. Second, the Handbook addresses rights in **return or removal** proceedings, which are sometimes preceded by detention in immigration centers or stations.

Starting from these two points, the Handbook should be read with these three components in mind:

- ▶ **Content and scope of the right:** addressed in brief, specific text boxes for each right contextualized at each stage at the border.

- ▶ **Situations that jeopardize the right:** cases in which rights may be susceptible to violation will be identified (and there may be several rights at issue in a single case); violence, crimes, and human rights violations that occur before and during border entry will be highlighted, as will the situations in which officials can and should act.
- ▶ **Operation of the right in light of the Handbook's approaches:** a guide or set of recommendations is offered on how border security and immigration authorities should respond, considering the human rights, gender, intercultural, and intersectional approaches and the human rights principles developed in this Handbook, which are based on the applicable inter-American standards.

CHAPTER 1. APPROACHES OF THE HANDBOOK IN THE MIGRATION AND REFUGEE CONTEXT



Approaches of the Handbook in the Migration and Refugee Context

1. Human rights approach

The human rights approach ensures that the rights of all people are guaranteed, respected, and protected by the people in charge of doing so—in other words, that all public officials fulfill their responsibilities.²⁸ As far as this Handbook is concerned, and following inter-American standards, governments and border control, security, and immigration authorities have the obligation to enforce human rights standards for all people, including refugees and migrants, regardless of their migration status.²⁹

This approach recognizes that refugees and migrants have full rights and should be the main focus in all discussions, policies, and services related to migration and international protection. These should be based on important principles such as nondiscrimination, empowerment, participation, inclusion, and accountability.³⁰

It also identifies the special protection needs of refugees and migrants due to the difficult situations they have left behind, the circumstances in which they have traveled, and the conditions in which they find themselves upon arrival in a new place. Under this approach, personal characteristics should be considered, such as age, gender, sexual orientation, disability, and ethnic or racial identity,³¹ or any other situation of vulnerability or state of need.

28. Human Rights Committee, General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, Eightieth session, UN Doc. HRI/GEN/1/Rev.7 at 225 (2004), para. 15.

29. Inter-Parliamentary Union, the International Labour Organization, and the United Nations (Office of the High Commissioner for Human Rights), Migration, Human Rights and Governance, 2015. Available at: <https://www.ohchr.org/en/publications/policy-and-methodological-publications/migration-human-rights-and-governance-handbook>.

30. Inter-Parliamentary Union, the International Labour Organization, and the United Nations (Office of the High Commissioner for Human Rights), Migration, Human Rights and Governance, 2015. Available at: <https://www.ohchr.org/en/publications/policy-and-methodological-publications/migration-human-rights-and-governance-handbook>.

31. OHCHR, Human Rights at the International Borders. A Trainer's Guide, New York, Geneva, 2021.

2. Gender approach

The gender approach helps us to understand that all people, regardless of their gender identity or sexual orientation, deserve to be treated with equality and respect. Decisions should not be made for them and their rights should not be ignored. It is important to acknowledge and value their autonomy and their power of choice and decision.

The gender approach does not relate solely to girls' and women's issues or violations of girls' and women's human rights. This approach makes it possible to examine the gender dimension when analyzing any social reality, as well as the consequences of assigning different roles, characteristics, and tasks according to sex and gender in the lives of all people.³² It also allows us to identify how the consequences of violence and human rights violations can be different and have differential impacts on women, men, and people with other identities, including LGBTIQ+ people.³³

The gender approach helps to understand how the rules and ideas of the society in which we live have created norms that say how “men” and “women” should be and behave.³⁴ It further indicates that these differences between the expected behaviors of “men” and “women” have caused discrimination and inequality. Women and LGBTIQ+ people have been treated unequally and have had fewer opportunities than men, which has created unequal power relations. The gender approach shows that these inequalities can be changed and that gender is not something we are born with, but rather is learned from society. This means that we can and should transform ideas, behaviors and norms so men, women, and LGBTIQ+ people are treated equally.

32. Office of the United Nations High Commissioner for Human Rights, *Integrating a Gender Perspective into Human Rights Investigations: Guidance and Practice*, New York and Geneva, 2019. Available at: <https://www.ohchr.org/en/publications/policy-and-methodological-publications/integrating-gender-perspective-human-rights>.

33. OHCHR Guatemala, *Herramienta para incorporar el enfoque de derechos humanos, género e interseccionalidad en sentencias sobre violencia de género* [Tool for Including a Human Rights, Gender and Intersectionality Approach in Judgments on Gender-based Violence], 2021. Available at: https://issuu.com/oacnudhgt/docs/herramienta_para_incorporar_e_enfoque_de_derechos; Office of the United Nations High Commissioner for Human Rights, *Integrating a Gender Perspective into Human Rights Investigations: Guidance and Practice*, New York and Geneva, 2019. Available at: <https://www.ohchr.org/en/publications/policy-and-methodological-publications/integrating-gender-perspective-human-rights>.

34. Scott W., Joan. “El género: una categoría útil para el análisis histórico” [Gender: a useful category for historical analysis], in Martha Lamas, comp. *El género: La construcción cultural de la diferencia sexual* [Gender: The Cultural Construction of Sexual Difference], PUEG-UNAM, Mexico, 1996, p. 265-302.

When talking about migration and international protection, the gender approach allows us to recognize that women and LGBTIQ+ people in human mobility should not automatically be seen as weak or vulnerable: they are people with the capacity to make decisions about everything that affects them, even when they decide to migrate. The gender approach helps us to understand that all people, regardless of their gender or sexual orientation, deserve to be treated with equality and respect. Decisions should not be made for them and their rights should not be ignored. It is important to recognize and value the autonomy and decision-making capacity of women and LGBTIQ+ people in all migration and refugee-related situations.

However, this approach also enables us to understand that their situations, experiences, and risks in human mobility differ from those of men.³⁵ For example, during displacement and along migration routes, women, girls and LGBTIQ+ people face a higher risk of gender-based violence.³⁶ It also helps us understand the unique experiences of transgender refugees and migrants as compared to cisgender people.³⁷ The fact that transgender people migrate with identity documents that do not match their gender identity increases the risk of discrimination and human rights violations. Lastly, this approach allows us to recognize how refugee and migrant women continue to disproportionately assume caregiving responsibilities in the context of human mobility, among other issues.

35. OHCHR, Human Rights at the International Borders. A Trainer's Guide, New York, Geneva, 2021.

36. As can be seen from the UNHCR study, *Nuestro derecho a la seguridad* [Our Right to Safety], available at: <https://segurasenmovilidad.org/> 2022.

37. *Ibid.*, p. 56.

3. Intercultural approach

The intercultural approach is aimed at acknowledging and respecting the different cultures that exist in our societies. Every culture has its own ways of seeing and understanding the world and its rights as a people, and it is important for cultures to coexist and respect each other.

At international borders, this approach means that we should adapt programs, policies, and services to provide initial care that takes account of the traditions and lifestyles of members of ethnic peoples, especially women, children, and adolescents. In other words, it is not only a matter of respecting their individual and collective rights but also of adjusting public programs and policies to meet their cultural needs and requirements.

People working at border crossings, such as immigration officials, asylum processing officers, customs officers, security officers, and social services personnel, must show respect and openness toward the cultures of the people who are part of mixed movements and who arrive seeking protection. This means valuing their traditions, beliefs, and cultural practices, not imposing judgments or prejudices, and meeting their specific and differentiated needs.

This is achieved through prior, free, and informed consultations, where a participatory and equitable dialogue must be ensured between communities that cohabit the border areas or with migrants or refugees who have settled near them. This approach calls for no one culture to have more power or be more important than another; all should be treated fairly and equitably.

4. Intersectional approach

The intersectional approach is a way of understanding how different parts of a person's identity, such as their gender, ethnicity, age, and even immigration or legal status are intertwined and can affect how they experience discrimination and human rights violations.³⁸ The kinds of violence (physical and symbolic) that people face due to prejudice based on their different characteristics can make them feel oppressed or discriminated against in a unique way.

For example, a migrant or refugee girl may face different challenges depending on her gender, ethnicity, documentation status, and whether she has a disability. She could face discrimination for any one of these characteristics, or even for all of them interrelated. An intersectional approach therefore helps us understand how these factors combine and can have an impact on her life and on the enjoyment and guarantee of her rights.

Intersectionality is a relevant analytical approach because it recognizes that refugees and migrants are not only discriminated against because of their human mobility status and the xenophobia to which they are subjected in different contexts, but also as people with multidimensional identities, statuses, and life circumstances.³⁹

This approach helps in taking measures to protect migrants and refugees, with consideration for all their differentiated needs and characteristics. This includes, for instance, considering their age, gender, culture, and whether they have a disability (physical, mental, intellectual, psychosocial, multiple, sensory, hearing, or visual) or a specific condition of vulnerability. It seeks to ensure that they are safe and protected, and to treat them fairly according to their needs.

38. AWID, Derechos de las mujeres y cambio económico: Interseccionalidad una herramienta para la justicia de género y la justicia económica [Women's rights and economic change: Intersectionality as a tool for gender justice and economic justice], 2004. Available at: http://www.inmujeres.gub.uy/innovaportal/file/21639/1/2_awid_interseccionalidad.pdf.

39. Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016) on women and girls with disabilities, CRPD/C/GC/3, 25 November 2016. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/3&Lang=en.

Hill Collins, Patricia, No guarantees: Symposium on Black Feminist Thought, Ethnic and Racial Studies, vol. 38 no. 13, pp. 2349-2354.

5. Differential approach

The differential approach ensures that people's differences are taken into account in the protection and promotion of their rights. It recognizes that each person is unique and needs to be treated fairly and equally, with consideration for his or her particular needs. It focuses on individual needs and circumstances to ensure that all rights are respected, especially those of persons who are in situations of special vulnerability or face discrimination,⁴⁰ such as migrants and refugees.

The differential approach acknowledges that some people may be more vulnerable or may face discrimination due to their gender, age, ethnicity, disability, sexual orientation, or other characteristics. Because of this, special attention must be paid to these individuals to ensure that their rights are respected and protected.

For example, in the case of a person with a disability who needs to access an immigration office or shelter system where stairs are the only means of entry, the differential approach would require that all necessary measures be taken to ensure that the person can enter the building safely and without obstacles, by installing ramps or elevators for people with disabilities.

⁴⁰. National Statistical System, Colombia. Guía para el enfoque diferencial e interseccional en la producción nacional de estadística [Guidelines for a differential and intersectional approach in the national production of statistics]. DANE. 2020. Adaptation of Article 13 of Law 1448 of 2011, Victims Law of Colombia.

Principles for Promoting, Protecting, and Respecting the Human Rights of Migrants and Refugees at Borders

Several principles on human rights at international borders emerge from the general obligation of States to respect, protect, and ensure the human rights of all persons within their jurisdiction, including refugees and migrants, regardless of their migratory status (regular or irregular), as detailed in this section.

However, it is worthwhile to highlight three principles that generally cut across the human rights approach:⁴¹

Primacy of human rights: Refugees and migrants are full rights holders. As such, they should be at the center of any debate, regulation, policy, assistance services, and program on migration and refugee issues.⁴²

Nondiscrimination: States shall protect refugees and migrants from all forms of discrimination on the grounds of their migratory status, refugee status, nationality, or any other type of intersectional discrimination.

Care and protection from harm: States should identify and consider the particular individual circumstances of migrants and refugees arriving at borders and ensure their effective protection and access to justice.

41. Recommended Principles and Guidelines on Human Rights at International Borders, Office of the United Nations High Commissioner for Human Rights (OHCHR) 2021. Available at: [41.Principios_y Directrices recomendados sobre los derechos humanos en las fronteras internacionales Oficina del Alto Comisionado para los Derechos Humanos de Naciones Unidas \(OHCHR\)](#)

2021. Disponible en: https://www.ohchr.org/sites/default/files/2021-12/OHCHR_Recommended_Principles_Guidelines_SP.pdf.

42. Inter-Parliamentary Union, the International Labour Organization, and the United Nations (Office of the High Commissioner for Human Rights), Migration, Human Rights and Governance, 2015. Available at: <https://www.ohchr.org/en/publications/policy-and-methodological-publications/migration-human-rights-and-governance-handbook>.

The Inter-American Principles on the Human Rights of all Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons (IACHR, 2019), also establish the following notable principles:

Best interests of the child or adolescent: The best interests of the child or adolescent must be a primary consideration.

Prohibition against the detention of children: Every child has, at all times, a fundamental right to liberty and to not be held in immigration detention centers.

Protection of crime victims: All migrants who are victims of crime have the right to assistance, protection, access to justice, and full and effective reparation for the harm suffered.

Regularization of migration status: States shall, when migrants are in their territory in an irregular situation, take measures to ensure that this situation does not persist.

1. Principle of equality and nondiscrimination

The equality of all persons and the prohibition of discrimination are peremptory norms of international human rights law. All international normative instruments include the imperative of equality and the right to nondiscrimination on the grounds of sex, gender (sexual orientation and gender identity), race, ethnicity, language, religion or belief, political or other opinion, social origin, disability (physical, mental, intellectual, psychosocial, multiple, sensory, hearing and visual), nationality, migratory or residence status, age, or whatever reasons for which individuals are attempting to cross international borders, or the circumstances in which they have traveled or find themselves;⁴³ in addition, they extend to the entire international normative framework, promoting an equality-based reading of all international treaties and covenants for the protection of human rights.

⁴³ Recommended Principles and Guidelines on Human Rights at International Borders. Office of the United Nations High Commissioner for Human Rights (OHCHR) 2021. Available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf.

This principle ensures that all States recognize, respect, protect, and fulfill each of the rights recognized in international human rights instruments without discrimination of any kind based on nationality or migratory status.⁴⁴

2. Pro persona principle

The pro persona principle is a rule that tells us how to interpret human rights laws.⁴⁵ It says that when different laws may apply to a given situation, States should choose the law that best protects the human rights of all persons, including refugees and migrants, regardless of their migratory status. If a law can be interpreted in more than one way, States must choose the interpretation that offers the greatest protection to the individual and is most comprehensive in terms of ensuring and respecting his or her human rights.

We can cite the example of a country that has a law recognizing that all people have the right to access to health care. If a migrant or refugee girl without identification documents arrives at a border crossing point in that country and needs medical attention, some say that the law does not apply to her because she was not born in that country and lacks identification documents. According to the pro persona principle, the civil service must interpret the law in the light most favorable to the child and allow her access to medical care, even if she was not born in the country.⁴⁶

44. It is important to note that not all differential treatment on the basis of nationality constitutes discrimination. The Inter-American Court of Human Rights established in Advisory Opinion 18/03 that discrimination contains three elements: (a) the act of distinguishing, treating differently, preferring, or excluding; (b) the act is motivated by certain characteristics of persons, their sex, gender, sexual orientation, ethnicity, age, disability, migratory status, or nationality, among others; and (c) the act results directly in the impairment or nullification of fundamental rights. The Inter-American Court further established in this advisory opinion that not every distinction is synonymous with discrimination as long as it is reasonable, objective, proportional and does not violate human rights. See I/A Court H.R., Advisory Opinion 18-2003 on the Juridical Condition and Rights of Undocumented Migrants, OC-18/03. Available at: <https://www.refworld.org/jurisprudence/caselaw/iacrthr/2003/en/90831>.

45. IACHR, Due Process in Procedures for the Determination of Refugee Status and Statelessness and the Granting of Complementary Protection, 2020. Available at: <https://www.oas.org/en/iachr/reports/pdfs/duprocess-en.pdf>.

46. Inter-American Court of Human Rights, Advisory Opinion OC 25-2018.

The pro persona principle operates at the international border to ensure that migrants and refugees are treated with dignity and that their human rights are protected, applying the law or proceeding most favorable to their situation and allowing them to seek protection and safety in the country where they have arrived.⁴⁷

3. Principle of non-refoulement and non-rejection at borders

The principle of non-refoulement constitutes an essential protection under international human rights law, international refugee law,⁴⁸ international humanitarian law, and customary international law. International human rights law establishes that the principle of non-refoulement means that no one can be returned to a country⁴⁹ where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm.⁵⁰ This principle applies to refugees, asylum seekers, and persons who may be in need of international protection at all times, irrespective of migration status.⁵¹

The obligation of non-refoulement also includes the obligation of non-rejection at the border, when persons are at a well-founded risk of being subjected to persecution in the event of return to their country of origin or habitual residence.⁵²

This prohibition against non-refoulement also means that refugees or persons in need of international or complementary protection cannot be turned away at the border without an adequate and individualized analysis of their applications.⁵³

47. IACHR, Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking, 2019. Available at: <https://www.oas.org/en/iachr/decisions/pdf/Resolution-4-19-en.pdf>.

48. Convention Relating to the Status of Refugees, 1951, art. 33. Available at: <https://www.refworld.org/legal/agreements/unga/1951/en/39821>.

49. His or her country of nationality, habitual residence, or a third State.

50. IACHR-OAS, Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons, Resolution 04/19 adopted by the Commission on December 7, 2019; OHCHR. Technical note: The principle of non-refoulement under international human rights law (2018). Available at:

<https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>.

51. The Inter-American Court has noted that the protection of the principle of non-refoulement—established in Article 22.8 of the American Convention—protects all foreigners, not just a specific category of foreigners, such as asylum seekers and refugees.

52. International Organization for Migration (IOM) Regional Office for South America and the Institute for Public Policy on Human Rights (IPPDH) of MERCOSUR, Regional Handbook on Human Rights of Migrants IOM/Mercosur, 2019. Available (in Spanish) at: <https://publications.iom.int/es/books/derechos-humanos-de-personas-migrantes-handbook-regional>.

53. Ibid.

The principle of non-refoulement in the case of children should be analyzed in light of the principle of the best interests of the child. A child should not be returned if it entails the risk of his or her fundamental human rights being violated, including the right to food or health.⁵⁴

Lastly, it is important to note that the Committee on Discrimination Against Women (CEDAW) has indicated that States *have an obligation to ensure that no woman will be expelled or returned to another State where her life, physical integrity, liberty and security of person would be threatened, or where she would risk suffering serious forms of discrimination, including serious forms of gender-based persecution or gender-based violence.*⁵⁵

4. Principle of non-penalization of irregular entry or stay

All migrants and refugees are protected under international human rights law even if they enter and remain in the host country without authorization.⁵⁶ According to the norms and standards of the Inter-American Human Rights System, the irregular entry or stay of migrants in a country should not be considered criminal offenses,⁵⁷ since border crossing is an administrative issue. Administrative sanctions applied to the irregular entry of migrants must be proportionate and reasonable.⁵⁸ Therefore, the general principle that should govern in any immigration proceeding is the freedom of the individual.⁵⁹ Accordingly, States should avoid the automatic and arbitrary detention of refugees or migrants, including persons with an irregular migration status.

54. General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, CRC/GC/2005/6, paras. 26 and 27. Available at: <https://www.refworld.org/legal/general/crc/2005/en/38046>.

55. CEDAW Committee, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women. CEDAW/C/GC/32, 2014, para. 23. Available at: <https://www.refworld.org/legal/general/cedaw/2014/en/102146>.

56. OHCHR, Human rights at international borders: exploring gaps in policy and practice, 2012.

57. IACHR, Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System, OEA/Ser.L/V/II. Doc. 46/15, 2015, para. 381. Available at: <https://www.oas.org/en/iachr/reports/pdfs/HumanMobility.pdf>.

58. OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders, 2021. Available at:

https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf.

59. International Organization for Migration (IOM) Regional Office for South America and the Institute for Public Policy on Human Rights (IPPDH) of MERCOSUR, Regional Handbook on Human Rights of Migrants IOM/Mercosur, 2019. Available (in Spanish) at: <https://publications.iom.int/es/books/derechos-humanos-de-personas-migrantes-handbook-regional>.

5. Principle of prohibition of collective expulsion of foreign nationals

International human rights law prohibits States from carrying out collective expulsions,⁶⁰ which should be understood as any measure to expel a foreign national that “is not based on individual cases but on group considerations, even if the group in question is not large.”⁶¹

Collective expulsions are contrary to international human rights law because they violate the right of residence and movement and have the potential to violate other fundamental human rights such as life, personal security and liberty, the right to seek and receive asylum, and the principle of non-refoulement.⁶² This is because it entails expelling people without having studied their individual migratory status, regardless of whether they are subject to persecution or any threats to their rights.⁶³

CHAPTER 2. MIGRANTS AND REFUGEES IN VULNERABLE SITUATIONS



Migrants and Refugees in Vulnerable Situations

Migrants and refugees in vulnerable situations are those who are at a higher risk of being victims of various human rights violations and/or situations of violence. States therefore have a heightened duty to protect such persons.⁶⁴ At international borders, it is essential that the vulnerability factors that migrants and refugees present at the individual, family, and community levels are identified and assessed from their first contact with border officials in order to determine their protection and care needs, as well as the services to which they should be referred.⁶⁵

Several factors should be considered when **assessing the vulnerability** of migrants and refugees:

- ▶ **Individual factors** such as age, sex, ethno-racial identity, sexual orientation, gender identity, personal history, pregnancy, mental health, disability, academic or educational level, and access to economic resources, among others.⁶⁶
- ▶ **Family or community factors** in their life, including the characteristics of the family or community, in the case of Indigenous people or other ethnic communities; their socioeconomic status; migration background; livelihoods; family, cultural, or community dynamics, including discrimination and gender-based violence.⁶⁷
- ▶ **Conditions underpinning mobility**, for example, why they decided to leave their countries, how they undertook the journey, travel conditions, resources available to them for their travel or settlement in a host country, and conditions of arrival in the country of transit or destination.⁶⁸

64. OHCHR, Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations, 2018. [PrinciplesAndGuidelines.pdf \(ohchr.org\)](#).

65. International Organization for Migration (IOM), IOM Handbook on Protection and Assistance to Migrants Vulnerable to Violence, Exploitation and Abuse, 2021. Available at: <https://publications.iom.int/es/books/iom-handbook-migrants-vulnerable-violence-exploitation-and-abuse>.

66. Ibid., p. 6.

67. Ibid., p. 7.

68. OHCHR, Human Rights at International Borders a Trainer's Guide, 2021. Available at: https://www.ohchr.org/sites/default/files/Documents/Publications/HR_InternationalBorders.pdf.

This assessment should also consider whether the migrant or refugee experienced gender-based violence, kidnapping, or has been subjected to trafficking, smuggling, torture or ill-treatment or family separation during the journey. These, among others, are some of the violence and traumatic experiences that migrants may face, which in turn exacerbate their situation of risk or vulnerability.⁶⁹ In some cases, migrants and refugees may face more than one of these phenomena along their migration route, which makes it necessary to consider these situations and their intersections in order to determine appropriate, necessary, effective and contextualized care and protection measures.

For this reason, it is vitally important to pay special attention to migrants and refugees in one or more of the following situations:⁷⁰

- Unaccompanied or separated children
- Children accompanied by one or both parents or by a family member
- Unaccompanied persons with a physical or mental disability
- Persons who show clear signs of impairment to their physical or emotional health
- Older adults
- Pregnant or breastfeeding women
- People at risk due to their sexual orientation or assumed gender identity, gender expression, and sexual characteristics
- Persons suspected of being under the influence of any drug
- Individuals suspected of being controlled or threatened⁷¹

69. Ibid., p. 104.

70. Regional Conference on Migration, Regional Guidelines for the Preliminary Identification and Referral of Migrants in Vulnerable Situations, 2013. Available at: https://crmsv.org/sites/default/files/publicaciones/lineamientos_esp_disco.pdf.

71. Ibid.

The level of vulnerability or risk faced by migrants and refugees can be assessed by considering the nature of the threat of violence and/or human rights violations committed against them along the migration route and/or upon arrival in the country of transit or destination.⁷² Individual and family or community factors that may influence their condition of vulnerability should also be considered.

The outcome is weighted in relation to the environmental factors available to the migrant or refugee to mitigate the risks and threats caused by harm and violence. If the sum of the elements linked to the threat and the risk and/or vulnerability factors at the individual and family or community level is much greater than the likelihood of their being mitigated by the migrants' and refugees' capacities and environment, the risk and/or vulnerability level will be very high. Conversely, the risk level will be lower if the individual and environmental capacity to mitigate the harm is greater and the threat and its additional factors are lower.

One example is the case of an Indigenous migrant woman who does not speak Spanish and has no identity document, since she says she handed it over to another person. It is also impossible to identify her age; however, based on her appearance, she could still be a minor. She entered the country at an unauthorized crossing, and has come with her one-year-old baby. She is still breastfeeding and says that she left behind her relatives on the road, whose whereabouts she does not know. The assessment of her vulnerability should take account of her ethno-cultural background, the fact that she self-identifies as an Indigenous woman, and the fact that she does not speak Spanish fluently. The analysis should also consider that she is most likely a minor, that she presents a significant level of malnutrition, that she is breastfeeding a baby under one year of age, and that she is unaccompanied and does not know the whereabouts of her family members. It should also be considered that she may be a victim of human trafficking because she gave her

72. The formula used in this Handbook to assess the vulnerability of refugees and migrants was based on the IOM's determinants of migrant vulnerability model, developed in the Handbook on Protection and Assistance to Migrants Vulnerable to Violence, Exploitation and Abuse. See International Organization for Migration (IOM), IOM Handbook on Protection and Assistance to Migrants Vulnerable to Violence, Exploitation and Abuse, 2021. Available at: <https://publications.iom.int/es/books/iom-handbook-migrants-vulnerable-violence-exploitation-and-abuse>. This methodology was also based on the formula developed by the tool for including a human rights, gender and intersectionality approach in judgments on gender-based violence (2021). See OHCHR Guatemala, Herramienta para incorporar el enfoque de derechos humanos, género e interseccionalidad en sentencias sobre violencia de género [Tool for Including a Human Rights, Gender and Intersectionality Approach in Judgments on Gender-based Violence], 2021. Available at: https://issuu.com/oacnudhgt/docs/herramienta_para_incorporar_el_enfoque_de_derechos.

identity card to a third party. All these elements together (migrant woman in an irregular status, presumed minor, breastfeeding woman, Indigenous, unaccompanied), make her level of vulnerability very high, as she faces additional challenges and may be exposed to higher-risk situations. Her situation warrants particular attention and measures should be taken to protect her and ensure that her rights are respected.

Once the level of vulnerability has been identified, individual responses⁷³ may include providing safe and, where appropriate, specialized shelter for Indigenous women or women survivors of human trafficking; providing clear information on available services regardless of her irregular status, ensuring interpretation services in her native Indigenous language; considering the cultural ways of ethnic peoples; providing physical, mental, and reproductive health care appropriate to her condition as a breastfeeding woman; providing a medical assessment to determine her level of malnutrition, as well as that of her child, providing legal advice and/or consular assistance in her native language;⁷⁴ notifying the respective child protection authorities and initiating a procedure to determine her age that respects her human rights and, if she is a victim of trafficking, immediately notifying the appropriate authorities and prioritizing protection measures.⁷⁵ At the family level, as she may be an unaccompanied minor, seek to locate and evaluate the family, take alternative care measures for unaccompanied migrant children that include the infant, and conduct assessments and best interest determinations for both of them.⁷⁶ Finally, measures should be taken to locate her family and seek family reunification.

73. See International Organization for Migration (IOM), IOM Handbook on Protection and Assistance to Migrants Vulnerable to Violence, Exploitation and Abuse, 2021. Available at: <https://publications.iom.int/es/books/iom-handbook-migrants-vulnerable-violence-exploitation-and-abuse>.

74. Regional Conference on Migration. Guidelines on Assistance and Protection of Women in the Context of Migration, 2016. Available at: https://rcmvs.org/sites/default/files/publicaciones/lineamientos_para_atencion_y_proteccion_de_mujeres_en_contexto_de_migracion_-_eng.pdf.

75. International Organization for Migration (IOM), IOM Handbook on Protection and Assistance to Migrants Vulnerable to Violence, Exploitation and Abuse, 2021. Available at: <https://publications.iom.int/es/books/iom-handbook-migrants-vulnerable-violence-exploitation-and-abuse>.

76. UNHCR, 2021 UNHCR Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child, 2021. Available at: refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=62b592be4.

Another example might be an Afro-transgender man from a Caribbean country where same-sex relations are criminalized and where there is no possibility of changing one's gender identity. This transgender man was intercepted in an operation by immigration authorities at the border. The analysis of his level of vulnerability based on the sum of individual and family factors and the assessment of his mobility conditions should consider the following elements: his status as a man of African descent and the possibility that he may have experienced racial discrimination; his transgender identity and the likelihood of having been subjected to acts of transphobia, including acts of sexual violence, in his country of origin, en route, or upon arrival in the country of transit or destination. Another element to examine is his risk of being deported to his country of origin as a transgender man. Once the level of vulnerability has been identified by weighing the sum of all these factors against the capacity to mitigate the risks, responses at the individual level may include providing safe and, where appropriate, specialized shelter for LGGTIQ+ persons; providing information on available services regardless of his irregular status, ensuring interpretation services in his language if he does not speak and understand the language of the receiving country; providing him with physical, mental, and sexual health care as a trans man, including the appropriate health care if he is taking medication to transition; provide legal advice and/or consular assistance with his informed consent;⁷⁷ if he has been a victim of sexual violence, immediately notify the proper authorities and ensure access to the proper mechanisms for access to justice. Lastly, if applicable, he should also be referred directly to the institution in charge of refugee status determination in the receiving country.

77. Regional Conference on Migration. Guidelines on Assistance and Protection of Women in the Context of Migration, 2016. Available at: [77. Conferencia Regional sobre Migración, Lineamientos para la atención y protección de mujeres en contexto de migración, 2016. Disponible en: https://crmsv.org/sites/default/files/publicaciones/lineamientos_para_atencion_y_proteccion_de_mujeres_en_contexto_de_migracion_-esp.pdf](https://crmsv.org/sites/default/files/publicaciones/lineamientos_para_atencion_y_proteccion_de_mujeres_en_contexto_de_migracion_-esp.pdf)

CHAPTER 3.

RIGHTS OF MIGRANTS AND REFUGEES AND THEIR OPERATION IN DIFFERENT BORDER CONTEXTS





ENTRY AND RECEPTION

RESCUE AND INTERCEPTION

Rights of special relevance at entry and reception

Mixed movements of people in the Americas may enter land or maritime border crossings on their own, either individually or in groups, after long journeys or crossings through several countries, or after having been identified in land or maritime rescue or interception operations.

In both scenarios, migrants and refugees arrive at borders in a regular manner or through irregular routes or options that put them at risk of shipwreck, loss, disappearance, illness, or even death due to the conditions of the roads or trails, or the circumstances in which they are transported. Whatever the circumstances, all persons arriving at the border who are met by the national authorities must be treated without discrimination and guaranteed their rights at all times.



Right to international protection

Content and scope of the right to international protection

The right to international protection, asylum, or refuge, is an internationally recognized right. The right to asylum must be realized under national legislation and international human rights treaties and can be further defined based on the Convention Relating to the Status of Refugees (1951) and the Cartagena Declaration (1984). The latter broadens the definition of refugee to include persons fleeing from contexts or situations of generalized violence, foreign aggression, internal conflicts, massive violations of human rights, or other circumstances which have seriously disturbed public order.

Refugee status determination procedures aim to assess whether a person seeking international protection meets the definitional requirements to be recognized as a refugee under international, regional, and national standards.

Situations that jeopardize this right in the context of migration

- The absence of mechanisms and/or trained staff to identify persons in need of international protection and persons in vulnerable situations or with special protection needs.⁷⁸
- The absence of offices and mechanisms specifically devoted to the management of international protection cases. In other words, when persons in need of protection cannot formally apply for refugee status or asylum given the situation and conditions under which they have had to leave their country.
- The expulsion of refugees or migrants, individually or collectively, without an individual assessment of each case and contrary to due process guarantees, for example, without legal counsel.

Operation of this right in light of the Handbook's approaches

- Ensure the presence of sufficient and fully trained personnel at the border to identify and guide people through the international protection process, as appropriate and when the particular case so warrants.
- Ensure access to rights and services for all migrants and refugees, in order to recognize the legal status of those who cannot return to their countries of origin, in particular for reasons related to the principle of non-refoulement.⁷⁹
- Provide due process guarantees in clear, accessible, culturally relevant language and language appropriate to the age, intellectual development, and needs of all migrants and refugees at the border, ensuring their access to an individual examination, as well as to an effective remedy and appeal procedure before a judicial authority.⁸⁰
 - In the case of ethnic peoples, take into account the collective and community dynamics, identifying mechanisms whereby specific cases can be studied with their needs in mind.

78. IACHR, Practical Guide to Improve International Protection and the Regularization of Legal Status in the Context of Large-Scale Mixed Migration Movements in the Americas, 2022. Available (in Spanish) at: https://www.oas.org/es/cidh/Publicaciones/2022/guiaPractica_ProteccionInternacional_MovilidadHumana_SPA.pdf.

79. Special Rapporteur on the human rights of migrants, Report on means to address the human rights impact of pushbacks of migrants on land and at sea, A/HRC/47/30, para. 107. j. Available at: <https://documents.un.org/doc/undoc/gen/g21/106/33/pdf/g2110633.pdf?token=7oSqaOLEg4VI9Z3zMI&fe=true>.

80. Special Rapporteur on the human rights of migrants, Report on means to address the human rights impact of pushbacks of migrants on land and at sea, A/HRC/47/30, para. 107. k. Available at: <https://documents.un.org/doc/undoc/gen/g21/106/33/pdf/g2110633.pdf?token=7oSqaOLEg4VI9Z3zMI&fe=true>.

- Provide access to legal and interpretation services that consider language barriers, including those of ethnic peoples, and access to sign language interpreters or formats accessible to the blind and persons with disabilities; consider gender issues.⁸¹
- Ensure that border staff take all necessary measures to ensure the best interests of children and adolescents, whether they are traveling alone or with adults. The best interests of the child must take precedence over general immigration and asylum case management. If a family is traveling, the situation of the children and adolescents, and their particular international protection needs, should be considered (for example, gender-based violence against migrant and refugee girls in their places of origin or along the migration route).
- Ensure that interviews for applications for international protection are always conducted in safe, private spaces appropriate to the self-identification of each person.
 - Asylum seekers should be able to choose the gender of the interviewer, as well as the gender and nationality of the interpreters.
 - It is particularly important that the right to recognition of self-defined sexual orientation and gender identity be ensured. This could be an early requirement for States to appropriately recognize LGBTIQ+ people as a group requiring special legal protection.⁸²
 - In the case of people with disabilities, interview spaces must be accessible to the diversity of disabilities (physical, mental, sensory, social). It is also important to provide sign language interpreters, facilities for blind people, audible access to information, and simple language. People with disabilities have the right to be accompanied by a person they trust during an interview process, but they also have the right to enter alone. It is important **ask in advance whether the person wishes to enter alone**. At the end of any interview or service, make sure the person understood all the information.⁸³ (See section 6.1.5 on the right to privacy).

⁸¹. Special Rapporteur on the human rights of migrants, Report on means to address the human rights impact of pushbacks of migrants on land and at sea, A/HRC/47/30, para. 107. j. Available at: <https://documents.un.org/doc/undoc/gen/g21/106/33/pdf/g2110633.pdf?token=ZoSqaOLEg4Vi9Z3zMI&fe=true>

⁸². https://www.apt.ch/sites/default/files/publications/apt_20181204_towards-the-effective-protection-of-lgbti-persons-deprived-of-liberty-a-monitoring-guide-final.pdf.

⁸³. Interview of María Soledad Cisternas Reyes, Special Envoy of the UN Secretary General on Disability and Accessibility. May 8, 2023.



Right to life

Content and scope of the right to life

All people have the fundamental right to live, that is, to be safe and protected. This right is essential because it allows for the exercise all other individual rights. No one may deprive another person of life unjustly or arbitrarily. This right must be observed by all people with authority in a country, such as police officers and immigration and asylum officers.

Protecting the right to life means that the State must ensure that no one takes the life of another person unjustly. The State thus has the responsibility to take all necessary measures to protect, keep safe, and preserve the lives of all people. It is its duty to ensure that all people can fully enjoy their rights and freedoms.

This protection of the right to life is the responsibility of all government institutions, including the authorities present at border posts. They must all work together to ensure the safety and protection of all people.

Immigration or asylum officials and international border security authorities should make it a priority to eliminate imminent danger to the lives and safety of refugees and migrants during **interception and rescue operations**. Refugees and migrants at imminent risk of death or in a situation that threatens their right to humane treatment must be identified immediately and provided with appropriate assistance.

83. Interview of María Soledad Cisternas Reyes, Special Envoy of the UN Secretary General on Disability and Accessibility. May 8, 2023.

Situations that jeopardize this right in the context of migration

- Excessive controls at international borders, sometimes deployed by law enforcement—border militarization—coupled with the expansion of physical barriers and advanced surveillance equipment aimed at deterring migration,⁸⁴ force migrants and refugees to attempt border crossings through increasingly dangerous irregular routes such as the desert, the sea, and the jungle, or by using life-threatening means of transportation.
- When refugees and migrants arrive in very precarious conditions at international borders and fail to receive humanitarian aid from the receiving States, which endangers their lives; this is especially so for children, the elderly, people with disabilities (physical, mental, intellectual, psychosocial, multiple, sensory, auditory, and visual), and mothers and fathers traveling alone with their children.

Operation of this right in light of the Handbook's approaches

- Favor civilian police forces at borders and avoid the disproportionate use of force by public authorities.
- Ensure that public servants are trained in human rights, emergency situations, the protection of migrants and refugees, and the identification and handling of cases of violence against migrants and refugees, including gender-based violence.
- Have female officers or public servants trained in primary care in cases of gender-based violence against girls, women, and members of the LGBTIQ+ population.
- Ensure access to physical and mental health care at the border; access to information on migration regularization processes and international protection; access to means of reporting cases of violence along the migration route, including gender-based violence, sexual violence, trafficking in persons, extortion, and murder.
- Ensure access to care for migrant children and unaccompanied children, protecting the best interests of the child. This may include safe, well-lit, and friendly spaces, as well as staff trained in the emotional care of children.

84. Special Rapporteur on the human rights of migrants, Report on means to address the human rights impact of pushbacks of migrants on land and at sea, A/HRC/47/30, paras. 44, 53. Available at: <https://documents.un.org/doc/undoc/gen/g21/106/33/pdf/g2110633.pdf?token=7oSqaOIEg4Vi9Z3zMI&fe=true>.

- Maintain an attitude of empathy and compassion toward all migrants and refugees, regardless of their migratory status. Ensure comprehensive, respectful, and humane care and the opportunity for a relationship of trust and safety between the first responder and the migrant or refugee.⁸⁵

Situations that jeopardize this right during interception and rescue operations

- Increased border controls by military forces heighten the risk that migrants and refugees will fall into the hands of unlawful groups (human or drug traffickers) and/or seek alternative routes, often exposing themselves to greater danger to their lives.
- Illegal armed groups involved in drug trafficking, organized crime, or human smuggling and trafficking in persons endanger the lives of migrants and refugees by controlling migration routes and smuggling routes and using violence against them in various ways. This includes subjecting them to extortion, kidnapping, gender-based violence, sexual violence, torture and, sometimes, using them to smuggle illicit goods. This situation deepens the vulnerability of unaccompanied children, women, LGBTIQ+ people, and other vulnerable groups.
- Disappearances of migrants and refugees along irregular routes, whether due to physical exhaustion, malnutrition, dehydration, or disease, or to violence by non-state armed groups.
- Irregular routes expose migrants and refugees to extreme physical conditions during the journey, including dehydration due to lack of drinking water, lack of food, diseases contracted during migration or displacement, and drowning risks when attempting to cross rivers, among others.⁸⁶
- Delays in search and rescue operations on land and at sea increase the danger refugees and migrants face and may result in loss of life.⁸⁷

⁸⁵. UNODC (2021). Manual de lineamientos especializados para primeros respondientes en materia de detección, atención y canalización de posibles casos de trafficking in persons y tráfico ilícito de migrantes [Handbook of specialized guidelines for first responders in the detection, handling, and referral of possible cases of human trafficking and migrant smuggling].

⁸⁶. Mandates of the Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention; the Working Group on Involuntary Enforced Disappearances; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Independent Expert on the enjoyment of all human rights by older persons; of the Independent Expert on protection against violence and discrimination based on sexual orientation or gender identity; of the Special Rapporteur on trafficking in persons, especially women and children; and of the Special Rapporteur on violence against women and girls, its causes and consequences, Communication on the humanitarian situation in the Darien Gap for migrants, 2022. Available (in Spanish) at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27726>.

⁸⁷. Report of the Special Rapporteur on the human rights of migrants, thirty-eighth session, A/HRC/38/41, 2018. Available at: <https://documents.un.org/doc/undoc/gen/g18/125/17/pdf/g1812517.pdf?token=ikjKTHVuGSqjP6V6m&fe=true>.

Operation of this right during interception and rescue operations

- Provide and maintain life-saving equipment to safeguard people's lives.⁸⁸
- Set up and publish emergency numbers that migrants and refugees can call to request timely intervention by the authorities to preserve their lives.
- Ensure that the emergency information that refugees and migrants can use to request intervention or rescue is accessible in terms of language and communication facilities for ethnic peoples and persons with disabilities.
- Ensure the proper identification of rescued or intercepted persons, respecting and guaranteeing their right to privacy, gender identity, and cultural self-identification, in order to prevent possible cases of disappearance.⁸⁹
- Have complete and updated information on people who have disappeared along the migration route, whether by sea or land:
 - Ensure safe and accessible forums in which migrants and refugees who have information can give testimony and feel secure and comfortable doing so.⁹⁰
 - Have interpreters who can receive information in different languages, including those of ethnic peoples.
 - When appropriate, take all necessary measures to protect the life and safety of migrants and refugees who have provided information on cases of disappearances.⁹¹
 - Ensure the right to non-refoulement, and ensure that migrants who provide information on the whereabouts of missing persons are not subject to reprisals.
 - Maintain specific coordination to deal with and refer cases of missing migrants and refugees. Assistance and referral should be prompt and timely.
 - Ensure that information reaches the authorities in charge of investigating cases of missing migrants and refugees.
 - When the bodies of missing migrants and refugees are found, ensure their identification and dignified return.

⁸⁸. OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders, 2021. Principle 2, Guideline 4, Ensuring human rights in rescue and interception. Available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf.

⁸⁹. Ibid., Principle 3, Guideline 4, Ensuring human rights in rescue and interception, p. 23.

⁹⁰. Committee on Enforced Disappearances, Guiding principles for the search for disappeared persons, OHCHR – Mexico, 2019. Available at: <https://documents.un.org/doc/undoc/gen/g19/134/11/pdf/g1913411.pdf?token=USkc1DCjxkyBS6eELH&fe=true>.

⁹¹. United Nations Committee on Enforced Disappearances, General Comment on Enforced Disappearances in the Context of Migration - Draft 1, paras. 35 – 41. Available at: <https://www.ohchr.org/sites/default/files/documents/hrbodies/ced/cfis/general-comment-1/2022-07-15/Concept-note-website.docx>.

- Ensure that the families and relatives of missing migrants and refugees, regardless of their place of residence, can effectively obtain information and participate in the investigation and search efforts.⁹²
- Plan rescue operations appropriately and with clear objectives, centering refugees and migrants in the strategies. These should be led by qualified staff, in teams of both sexes or different genders; and the supply of food, water, and emergency sanitation services should be guaranteed.⁹³
- Encourage shipping companies and vessel owners to comply with their obligation to assist and rescue migrants and refugees in distress so they can be transferred to a safe place.⁹⁴
- Each authority, within its own area of responsibility, may implement a strategy of periodic controls to prevent private transport companies from abusing refugees and migrants by overcharging or transporting them in conditions that put their lives at risk.⁹⁵

⁹². United Nations Committee on Enforced Disappearances, CED/C/PAN/CO/1, 4 November 2021.

⁹³. OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders, 2021. Principle 8, Guideline 4, Ensuring human rights in rescue and interception. Available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf.

⁹⁴. Safe place is a place where migrants and refugees are free from any kind of threat, including refoulement, and where their basic rights (adequate food, water, etc.) are guaranteed. See OHCHR, Human Rights at the International Borders. A Trainer's Guide, New York, Geneva, 2021.

⁹⁵. OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders, 2021. Principle 8, Guideline 4, Ensuring human rights in rescue and interception. Available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf.



Right to humane treatment

Content and scope of the right to humane treatment and the prohibition of torture

States have an obligation to protect the right to humane treatment, both physical and mental, of all persons under their jurisdiction, including migrants and refugees. Under international human rights law, it is forbidden to torture anyone, either physically or psychologically, in any situation (including war, threats to national security, or states of emergency). This prohibition also applies everywhere in the country, including at international borders.

In the context of human mobility, the absolute prohibition of any act that may constitute physical or psychological torture means that there is no justification for immigration and border authorities to use methods that may result in cruel, inhuman, or degrading treatment in the performance of their duties, whether during detention or during security and immigration controls. Furthermore, individuals responsible for these acts cannot be exempted from responsibility, even if they received an order from a higher-ranking official. Superiors will be held responsible for acts of torture committed by subordinates under their supervision.

Situations that jeopardize this right in the context of migration and asylum

- The process of human mobility makes migrant and refugee women, girls, and LGBTIQ+ people (including those belonging to ethnic groups) more vulnerable to sexual violence, exploitation, and trafficking along migration routes. These forms of violence may, in some circumstances, constitute torture, cruel, inhuman, and degrading treatment.⁹⁶ The failure of States to properly

96. Human Rights Council, A/HRC/31/57, 2016, Available at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F31%2F57&Language=E&DeviceType=Desktop&LangRequested=False>.

identify migrants and refugees whose right to humane treatment has been violated and provide them with assistance and support consistent with international human rights standards could lead to the revictimization of survivors and to further mistreatment. ⁹⁷

- Subjecting migrants and refugees to identification procedures at international borders such as body searches and humiliating and invasive examinations, particularly for women, the LGBTIQ+ population, people with disabilities (physical, mental, intellectual, psychosocial, multiple, sensory, hearing, and visual), and people belonging to ethnic groups, puts their human rights at risk. ⁹⁸
- Sometimes, migrants and refugees are subjected to mistreatment by border authorities that may amount to sexual abuse during body searches and/or processing by officials.
- The mistreatment or denial of information to women, adolescents, girls, and transgender people seeking information and access to sexual and reproductive health services, particularly pregnant women whose pregnancies may be endangered along migration routes, are forms of gender-based violence that, in certain circumstances, may amount to cruel, inhuman, and degrading treatment. ⁹⁹

⁹⁷. Ibid., 31.

⁹⁸. Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, para. 36. Available at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F31%2F57&Language=E&DeviceType=Desktop&LangRequested=False>.

⁹⁹. CEDAW Committee, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, para. 18. Available at: <https://undocs.org/Home/Mobile?FinalSymbol=CEDAW%2FC%2FGC%2F35&Language=E&DeviceType=Desktop&LangRequested=False>.

Operation of this right in light of the Handbook's approaches

- Develop capacities for the identification of migrants and refugees who may have been subjected to torture, cruel, inhuman, or degrading treatment or kidnapping and/or human trafficking, both in their place of origin and along the migration route. To this end, the following indicators may be considered (which are neither exhaustive nor decisive, but are provided merely as a guide): ¹⁰⁰
 - Observe body language. Nervousness, trembling, sweating, fainting, signs of anxiety, hostility or self-destructive behaviors, or walking as if disoriented are sometimes signs of having suffered some type of violence or situation that warrants attention.
 - Identify whether individuals are restricted in their movement while crossing the border, suggesting that they may be controlled by a third party.
 - Reluctance to speak and interact.
 - Signs of physical abuse: bruises, wounds, physical signs of violence on the body.
 - When explaining signs of physical abuse, they show confusion and fail to explain them clearly.
- Bodily inspection procedures should respect the humane treatment of migrants and refugees. They should consider the person's age, gender, sexual orientation, gender self-identification, disability status (physical, mental, intellectual, psychosocial, multiple, sensory, hearing, or visual), language, and membership in an ethnic or other cultural group.
- Ensure that survivors of violence receive care in their own language, especially sexual and reproductive health care for girls, women, LGBTIQ+ people, people with disabilities, and people belonging to ethnic groups.
- Have **safe, accessible spaces** for all migrants and refugees. This means ensuring accessible, comfortable, friendly spaces, particularly for women and girls and people from different ethnic groups. These spaces should be suitable for people with disabilities, i.e., physically accessible, with appropriate lighting for people with low vision, and with staff trained in sign language and/or with assistive technology to communicate with people with disabilities. Whenever possible, differentiated spaces should be available for LGBTIQ+ people, integrating the use of

¹⁰⁰. Some of these elements have been taken and adapted from: UNODC (2021). Manual de lineamientos especializados para primeros respondedientes en materia de detección, atención y canalización de posibles casos de trafficking in persons y tráfico ilícito de migrantes [Handbook of specialized guidelines for first responders in the detection, handling, and referral of possible cases of human trafficking and migrant smuggling].

inclusive language that recognizes their characteristics and needs in terms of their gender identity and expression. If a separate space is not an option, make sure inclusion is highlighted in the space that is available; for example, have a sign or flag indicating diversity and inclusion.

Right to humane treatment (disproportionate use of force)

International standards establish that the use of force should always be applied exceptionally, and that it should be used when other nonviolent means have been exhausted. It should also comply with the principles of legality, precaution, necessity, proportionality, nondiscrimination, and accountability.

Situations that jeopardize this right during interception and rescue operations

- Interception of large mixed flows in which groups of migrants and refugees are deterred or dispersed through the disproportionate use of force.
- Operations to intercept cargo transport in which criminal groups illegally move/smuggle migrants and refugees, jeopardizing their right to humane treatment.
- Operations to intercept maritime transport used for smuggling and trafficking refugees and migrants, some for labor and/or sexual exploitation, in which the lives and humane treatment of migrants and refugees may be endangered during rescue.

Operation of this right in the context of interception and rescue

- Avoid dangerous interception measures such as persecution that pose a risk to the humane treatment of migrants and refugees.
- Prohibit pushbacks and collective expulsions in cases of interception and rescue.¹⁰¹

¹⁰¹ Special Rapporteur on the human rights of migrants, Report on means to address the human rights impact of pushbacks of migrants on land and at sea, A/HRC/47/30. Available at: <https://documents.un.org/doc/undoc/gen/g21/106/33/pdf/g2110633.pdf?token=7oSqaQIEg4VI9Z3zMI&fe=true>.

- Immigration personnel responsible for rescue operations and interceptions should not use firearms during operations. Instead, immigration officials should have the equipment and tools so that—if necessary and as a last resort—they can use nonlethal force in a proportional, differentiated, and progressive manner.¹⁰²
- Operations and/or detentions carried out in the context of interceptions may not jeopardize the humane treatment of migrants and refugees, due to the unnecessary and/or disproportionate use of force.
- Enable migrants and refugees, in rescue or interception operations, to communicate with their families as soon as possible to inform them of their situation by facilitating access to means of communication, especially in cases of unaccompanied or separated migrant and refugee children and people with disabilities.¹⁰³



Right of access to information

Content and scope of the right of access to information

All migrants and refugees, including those **rescued or intercepted**, those entering by their own means (with or without authorization), and those in **return or deportation** proceedings, have the right to seek, receive, and impart information, in the language they understand and in formats they can access. This means taking all necessary measures to ensure that they are fully informed of their rights, obligations, and options for asylum and safe, orderly, and regular migration, including the requirements for entry and stay, the forms of protection available, and the options for return and reintegration, and that they are aware of the risks involved in irregular migration.

¹⁰². OHCHR, Human Rights at International Borders a Trainer's Guide, 2021. Available at: https://www.ohchr.org/sites/default/files/Documents/Publications/HR_InternationalBorders.pdf.

¹⁰³. Global Compact for Safe, Orderly and Regular Migration, Objective 8 (c), 2018.

Border authorities should provide all rescued or intercepted refugees and migrants with information about their right to consular assistance, should they wish to receive it.

Situations that jeopardize this right in the context of migration

- The dearth of accessible information on the rights of refugees and migrants and services available to them along the various migration routes and at international borders. Sometimes, more information is available at the busiest border crossing points, while the same information is not available at the less frequented ones.
- When information on the rights of refugees and migrants is only in the language of the receiving country, in a format that is difficult to understand, learn, and access for people who do not speak the local language, monolingual ethnic peoples, or people with physical, sensory, or intellectual disabilities.

Operation of this right in light of the Handbook's approaches

- Provide information in accessible languages and formats in the different countries of transit and destination and at every international border.
- Provide accessible information on access to international protection and on migration routes; ways to obtain assistance in the transit or host country; specific information such as health care (sexual and reproductive health, in the case of girls, women, and trans people); access to justice, and access to due process.
- This information should be in:
 - Formats accessible to people with various disabilities (physical, mental, intellectual, psychosocial, multiple, sensory, hearing, or visual).
 - Easy-to-read formats, pictograms, Braille, or audible and/or visual means.¹⁰⁴

¹⁰⁴ RAIDIS & UNHCR, Discapacidad y Movilidad Humana. Estudio regional sobre la situación de las personas con discapacidad refugiadas, desplazadas y migrantes en América Latina [Disability and Human Mobility. Regional study on the situation of disabled refugees, displaced persons and migrants in Latin America], 2021. Available at: <https://www.r4v.info/es/document/acnur-discapacidad-y-movilidad-humana-abril-2021>.

- Culturally mediated formats, accessible to ethnic peoples. These can include infographics, videos, or audio materials in ethnic group languages that respect the oral tradition of ethnic peoples who regularly cross the border. For example: Wayuu peoples in Colombia; Pemón or Warao peoples in Brazil.
- Formats in language that is clear and appropriate for different age and literacy levels.
- Formats accessible to people who speak a language other than that of the transit or host country.
- Formats that provide clear, timely, and up-to-date information.
- Have staff who have been trained and made aware of the need to provide information to all migrants and refugees without distinction. Staff should take the time to make sure people have understood the information they have been given.
- At all times, when providing the migrant or refugee with information and assistance, ask whether he or she wants or needs to be accompanied. It is essential to ensure that people receive information in a safe context and that they understand all the information they are being given.¹⁰⁵



Right to privacy

Content and scope of the right to privacy

All migrants and refugees, regardless of their regular or irregular status, have the right to privacy. States must ensure protection from arbitrary or unlawful interference with the private and family life of migrants and refugees, and unlawful attacks on their honor and good name. Any interference with the right to privacy, e.g., surveillance of migrants' or refugees' communications, must be justified by the authority, which must articulate an evidence-based reason for this interference, and must comply with the principles of legality, proportionality, and necessity, regardless of the person's nationality.

¹⁰⁵ Fundación DIGNITEM, Directrices por un servicio policial inclusivo de calidad para personas con discapacidad [Guidelines for a quality inclusive police service for people with disabilities]. Special Envoy of the Secretary General of the United Nations. December 2020.

This right also includes the protection of the personal data of migrants and refugees. Immigration and border authorities' obligation with respect to this right is to ensure that personal information, including biometric data, is obtained lawfully and without coercion, and that its storage, transfer, and disposal comply with international human rights standards. The data of migrants and refugees must be handled in a confidential manner, and its collection and retention must be regulated by law and in accordance with international human rights law.

In any **operation to intercept and/or rescue** refugees and migrants, States should ensure that any photography, handling of refugees' and migrants' personal data, or taking of statements is carried out in line with applicable international standards and national human rights laws in relation to the content and scope of the right to privacy and in a way that does not jeopardize their safety.

Situations that jeopardize the right to privacy

- Not having safe spaces for interviews or dialogues with migrants and refugees, in which they are asked for personal information, or any information that exposes them to an uncomfortable situation or risk to their humane treatment or life. In particular, not having safe spaces that allow women or people from the LGBTIQ+ community to share information about situations of violence or risk they have experienced on the migration route by State or non-State agents.
- Asking for personal information that is not relevant to the immigration control or refugee status determination process and that could be used in a discriminatory way to deny entry or regularization of status. This may include, for example, a person's sexual orientation, gender identity, or health or disability status.
- The fact of a refugee or migrant's official documentation not conforming to or legally recognizing their self-identified gender identity puts them at risk of arbitrary interference with their privacy at international borders.
- Asking for passwords for cell phones to access social media accounts and obtain information on the profile of refugees and migrants that is not relevant for immigration control purposes.

- Asking refugees and migrants for information about their family members in the host country who may be in an irregular status, which could be used against them to initiate detention and deportation proceedings.
- Sharing information about refugees and migrants with the authorities of their country of origin without their informed consent.¹⁰⁶
- Collecting biometric data on migrants and refugees, without informing each person of the limited use of such information.
- The photographing and videotaping of migrants and refugees by the media without their informed consent during **interception and rescue operations**.¹⁰⁷

Operation of the right to individualized assistance in light of the Handbook's approaches

- **Provide safe** spaces for interviews and bilateral or community dialogues—depending on the particular case—with migrants and refugees:
 - They should be sufficiently spacious, well-lit—preferably with natural light— ventilated and accessible to all refugees and migrants.
 - In the case of members of an ethnic people, who may be migrating as a group, these spaces should provide culturally appropriate conditions. For example, whenever possible, they should be outdoors or have natural light and ventilation, have signs in their own languages or other culturally relevant images, avoiding stereotypes and prejudices.
 - Spaces should be accessible to people with all kinds of disabilities (physical, intellectual, and sensory).
 - Provide accessible physical spaces: mobility ramps for people with physical disabilities, lighting for the visually impaired, and other facilities.
 - Pay full attention to what the person is saying, allowing sufficient time for speaking and listening. In some cases, particular attentiveness is required to assist a person with a disability.

¹⁰⁶. Ibid., p. 129.

¹⁰⁷. OHCHR, Human Rights at International Borders a Trainer's Guide, 2021. Available at: https://www.ohchr.org/sites/default/files/Documents/Publications/HR_InternationalBorders.pdf.

- Providing assistance to LGBTIQ+ migrants and refugees requires using inclusive language, not presuming heterosexuality, and being able to inquire about their sociocultural context in order to assess the risks and violence to which they are exposed along migration routes or in their place of origin.¹⁰⁸
- Always ask all migrants and refugees, but especially people with disabilities, women and girls, including those belonging to ethnic groups, whether they wish to be alone or accompanied during the interview or dialogue. The person should always be addressed directly and asked how he or she feels most comfortable and safe, taking into account the identification of situations of special vulnerability and violence, for example, gender or human trafficking.
 - People with disabilities have the right to be accompanied by a person they trust during an interview process, but they also have the right to enter alone. Just because someone else is with them does not mean they must be with that person all the time. It is important **ask in advance whether the person wishes to enter alone**. Always address people with disabilities directly and ask them what they want and how they feel most comfortable and safe.¹⁰⁹
- All tests, interviews, or requests for information from migrants and refugees should respect the rights to privacy, informed consent, confidentiality, dignity, and nondiscrimination.¹¹⁰
- Migrants and refugees should be consulted and provided with a clear and accessible explanation of the use of their information, and their explicit consent should be obtained for its use. Stringent safeguards should be put in place in immigration and asylum procedures to prevent the misuse of people’s biometric data.¹¹¹
- Immigration authorities will have to integrate the following into the identification and registration procedures, both in **rescue operations** and upon **entry through border crossing points**:
 - The right of individuals to self-identify as members of ethnic peoples.
 - The obligation to identify and register the identity of refugees and migrants, respecting their gender identity and avoiding any arbitrary interference with their right to privacy.

¹⁰⁸. Intersectionality Resource Guide and Toolkit - UN Women, p. 38.

¹⁰⁹. Interview of María Soledad Cisternas Reyes, Special Envoy of the UN Secretary General on Disability and Accessibility. May 8, 2023.

¹¹⁰. Special Rapporteur on health, A/HRC/23/41, paras. 28–33 on immigration policies.

¹¹¹. OHCHR, Human Rights at International Borders a Trainer’s Guide, 2021, p. vii. Available at: https://www.ohchr.org/sites/default/files/Documents/Publications/HR_InternationalBorders.pdf.



Right to health

Content and scope of the right to health

Health facilities, goods and services must be accessible (both legally and in practice) to the most vulnerable and marginalized sectors of the population, without discrimination of any kind, including on the basis of nationality or migratory status.

States have the obligation to respect the right to health, in particular by refraining from denying or limiting the equal access of all people, including migrants, to preventive, curative, and palliative health services; and to refrain from imposing discriminatory practices related to the health status and needs of women. The **right to sexual and reproductive health and menstrual health** is an integral part of the right to health.

Border crossing points should have medical and health professionals to provide services, including psychological first aid and **sexual and reproductive health** services for arriving migrants and refugees, whether they are in transit or intend to stay. They should also be screened and referred for emotional and mental health care when necessary. It is important to note that the right to health involves a set of rights and freedoms. One of these freedoms is that no person is obligated to undergo medical treatment or HIV testing without their consent and without being informed.

In **interception and rescue** operations, States should provide immediate assistance to refugees and migrants that includes medical care, including initial psychological care and sexual and reproductive health care.

Situations that jeopardize the right to health in the border context

- Health issues associated with long, traumatic, and exhausting journeys, including accidental injuries, hypothermia, burns and dehydration, as well as untreated infections, unwanted pregnancy, pregnancy and childbirth-related complications, and injury and serious trauma due to violence suffered en route, which jeopardize the right of migrants and refugees to physical and mental health.¹¹²
- Legal, language, and economic barriers and prejudices surrounding refugees and migrants that hinder their access to health services at international borders.
- Lack of specialized mental health and psychological first aid services, and of qualified staff to detect cases of abuse, mistreatment, and/or violence that need to be treated and/or referred for psychological support, especially for girls, women, and LGBTIQ+ people.
- Lack of medical staff trained to detect cases of human trafficking and smuggling, gender-based violence and sexual violence, and lack of safe facilities qualified to care for women, girls, and LGBTIQ+ survivors of such violence.
- Barriers to:
 - Medical care for people with different types of disabilities, especially women and girls.
 - Accessible care for ethnic peoples that is respectful of their worldview and customs and is provided in their own language, allowing for the integration of their traditional medicine and other forms of healing specific to their peoples.
- Failure to assess the particular medical needs, including those related to sexual and reproductive health, of refugees and migrants in **interception and rescue operations**.
- Failure to prioritize health and emergency medical care for people who are injured or in need of critical care over immigration control or security measures or procedures in **interception and rescue operations**.¹¹³
- Lack of access to basic, sufficient, quality, and culturally appropriate food for migrants and refugees at the time of **rescue and interception**.
- When **rescued or intercepted** migrants and refugees have not eaten enough food during the journey.

¹¹². Report of the United Nations High Commissioner for Human Rights, Promotion and protection of the human rights of migrants in the context of large movements, A/HRC/33/67, 2016, para. 53. Available at: <https://www.ohchr.org/en/documents/reports/ahrc3367-promotion-and-protection-human-rights-migrants-context-large-movements>.

¹¹³. UNHCR, Rescue at Sea, Stowaways and Maritime Interception, 2011. Available at: <https://www.unhcr.org/sites/default/files/legacy-pdf/4ee1d32b9.pdf>.

Operation of this right at border posts in light of the Handbook's approaches

- Border institutions should have a “flow” or “route” for emergency medical care or referral to the nearest health centers or competent institutions or organizations.
 - Define a protocol indicating who will accompany the person, if he or she is with a family group or if he or she is an unaccompanied child.
- Security and immigration personnel should be able to refer cases to nearby, accessible health service facilities for the care of people with disabilities (physical, mental, intellectual, psychosocial, multiple, sensory, hearing, or visual), staffed by health care workers who are trained and sensitive to the medical care of migrants and refugees.
- Ensure that immigration and border security checkpoints:
 - Have health personnel trained in psychological first aid.
 - Have personnel with the capacity and sensitivity to identify and deal with cases of trafficking in persons, gender-based violence, and sexual violence, for the care of girls, women (including women from ethnic groups and women with disabilities), and LGBTIQ+ people (in relation to section 6.1.2.2 on the right to humane treatment/prohibition of torture).
 - Have personnel with the capacity to identify the specific health needs of some of the migrant and refugee population groups:
 - Recurrent diseases in ethnic peoples, such as skin problems, infectious diseases such as malaria, stomach problems, and lack of vaccines.
 - Sexual and reproductive health needs of women and girls, women and girls from ethnic groups, and women and girls with disabilities.
 - Identification in cases where specific care should be provided to LGBTIQ+ people.
 - Have safe and accessible spaces to provide care in cases of trafficking in persons, and gender-based and sexual violence against girls, women, and LGBTIQ+ people (in relation to section 6.1.5 on the right to privacy).
 - Engage in consultations with local leaders to ensure that initial care is respectful of the cultural perspective of each people and is consistent with their needs and traditional medicine (at borders where ethnic peoples are present).
 - Provide interpreters of different languages, including sign language and the languages of the ethnic peoples most frequently encountered at the border.

- Ensure that care for children and adolescents, pregnant or breastfeeding women, older adults, people with any type of illness, people with disabilities (physical, mental, intellectual, psychosocial, multiple, sensory, hearing, or visual), Indigenous people, and LGBTIQ+ people is prioritized, with prior consultation about their wishes ¹¹⁴ and taking into account their sexual and reproductive health and menstrual period needs and requirements.
- Border authorities should **not** automatically assume that migrants and refugees are “vulnerable.” In particular, girls, women, people with disabilities, Indigenous people, and LGBTIQ+ people are vulnerable because they lack the free will or capacity to make their own decisions in relation to their right to health.
- Ensure that **interception and rescue operations** include medical services and emergency equipment to provide first aid, to conduct necessary examinations, and to refer migrants and refugees for additional medical care, including mental health referrals.
- Provide immediate and appropriate assistance to refugees and migrants who are at imminent risk of death or who are injured in **rescue or interception** operations.¹¹⁵ This includes identifying individual health care needs, including the mental and reproductive health needs of refugees and migrants.

¹¹⁴. Interview with María Soledad Cisternas, May 8, 2023.

¹¹⁵. OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders, 2021. Principle 3, Guideline 4, Ensuring human rights in rescue and interception, p. 23. Available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf.



Right to housing, shelter, food, and drinking water

Content and scope of the right to housing, food and drinking water

All people, including refugees and migrants, have human rights that must be respected. These rights include the right to have a place to live, food, clean water, and sanitation.

The right to **housing or shelter** refers to having adequate housing, and applies to all individuals and groups, regardless of age, gender, or migratory status. States should pay special attention to migrants and refugees in situations of multiple vulnerability, such as children, people with disabilities, LGBTIQ+ people, Indigenous people, and survivors of gender-based violence.

At international borders, States should ensure that all persons in need of accommodation or whose travel is delayed have access to **sufficient nutritious, quality food** appropriate to their culture and age. This is especially important for children and breastfeeding women.

States should also ensure that all migrants and refugees, regardless of their location or migratory status, have **access to sufficient drinking water** for themselves, their families, or their communities. They should also have access to adequate sanitation that is private, clean, hygienic, safe, and respectful of their dignity. Access to sanitation encompasses all aspects of life, both physical and economic.

In **interception and rescue** operations, access to nutritious, culturally appropriate food, potable water, sanitary items, and blankets should be ensured.

Situations that jeopardize the right to housing in the border context

- The fact that refugees or migrants, while awaiting admission to transit or receiving countries, are often forced to wait and/or live without proper shelter and sanitation and without access to adequate food and drinking water. In this context, refugees and migrants often present cases of malnutrition or diseases present in border areas, such as malaria or dengue fever in tropical or jungle regions. Skin diseases related to poor hygiene and overcrowding, such as mycosis and dermatitis, are often prevalent and there is an increased risk of communicable diseases.¹¹⁶
- The limited supply of State-run shelters, so that migrants and refugees, without exception, can have access to housing, food, sanitation, and drinking water.
- The poor conditions of some border area shelters, which, among other things, are overcrowded and inadequate to provide potable water and decent sanitation.
- The lack of adaptability (adaptation) of shelters with regard to:
 - appropriate cultural considerations for ethnic peoples,
 - and/or for people with various types of disabilities (physical, mental, intellectual, psychosocial, multiple, sensory, hearing, or visual), meaning physical accessibility such as ramps, sanitation suitable for people with diminished physical capacity, or lighted spaces for people with low vision.
- The barring, in some contexts, of irregular migrants or LGBTIQ+ people from accessing shelters, or the obligation imposed by States on the institutions that manage these shelters to provide information on their users to the immigration authorities.¹¹⁷
- In some situations, migrants and refugees have not consumed enough food along the migration route and show signs of malnutrition when **rescued or intercepted**.

¹¹⁶. OHCHR, Promotion and protection of the human rights of migrants in the context of large movements, A/HRC/33/67, 2016, para. 56. Available at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F33%2F67&Language=E&DeviceType=Desktop&LangRequested=False>.

¹¹⁷. OHCHR, Promotion and protection of the human rights of migrants in the context of large movements, A/HRC/33/67, 2016, para. 58. Available at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F33%2F67&Language=E&DeviceType=Desktop&LangRequested=False>.

Operation of the right to have specific needs met in light of the Handbook's approaches

- The specific needs of all migrants and refugees, including children, pregnant or breastfeeding women, the elderly, people with disabilities (physical, mental, intellectual, psychosocial, multiple, sensory, hearing, or visual) and Indigenous people should be met.
- Provide appropriate initial humanitarian assistance that includes:
 - The provision of nutritious and culturally appropriate food
 - Drinking water facilities
 - Sanitation facilities (bathrooms and showers) that are:
 - gender-sensitive
 - accessible for people with various disabilities (height adjustments, mobility aids)
 - culturally appropriate
 - safe
 - have suitable, accessible, safe shower spaces differentiated by sex and gender
- Security and immigration officials should be able to refer migrants and refugees to shelters that:
 - provide safe spaces for women, children and LGBTIQ+ people.
 - have culturally adapted food and sanitation spaces for ethnic peoples; spaces that offer the option of using hammocks or mats, where ethnic people can rest in keeping with their customs and practices. Consider the community, group and family nuclei of ethnic peoples; however, always prioritize listening to women, girls, and LGBTIQ+ people about their needs and requirements in order to ensure their safety and security.
 - are adapted for people with different disabilities, e.g., with reduced mobility: in the case of multi-story or multi-level buildings, they should have ramps or aids to facilitate movement or have sufficient facilities on the first floor (dining rooms, bedrooms, sanitation, recreation).
- Ensure, during **interception and rescue operations**, access for all migrants and refugees, without discrimination of any kind, to nutritious and culturally appropriate emergency food, including access to safe drinking water.¹¹⁸

¹¹⁸ OHCHR, Principios y Directrices recomendados sobre los derechos humanos en las fronteras internacionales, 2021. Principio 1, Directriz 5. Los derechos humanos en el contexto de la asistencia inmediata. https://www.ohchr.org/sites/default/files/2021-12/OHCHR_Recommended_Principles_Guidelines_SP.pdf



Right to family unity

Content and scope of the right to family unity

Family unity and family reunification should be paramount considerations in any decision about the migratory status of individuals, taking into account the best interests of children and adolescents and their right to be free from deprivation of liberty.

Protection of the family must ensure equal rights and nondiscrimination on the basis of sexual orientation or expression and gender identity.

Operations to rescue or intercept migrants and refugees at international borders should always safeguard the right to family unity; therefore, families should not be separated and every effort should be made to keep them together. Ensuring this right means that border authorities should facilitate the reunification of migrants who have been separated from their families.

Situations that jeopardize the right to family unity in the border context

- Separating refugees and migrants from their families at international borders, including during **interception and rescue operations**, isolates people from their nuclear families. This situation, in addition to the concern for the fate of the family members they left behind in their places of origin, endangers their physical and emotional health.¹¹⁹
- The separation of children from their relatives during **interception and rescue operations** or as a consequence of the **deportation** of one or both parents.

¹¹⁹. Ibidem, párr. 40.

- Not being in possession of identification documents or having documents that are in poor condition, especially those of children.
- Restrictive and stereotypical understandings of the concept of family by immigration or security authorities, including **rescue and interception** authorities, jeopardize the family unity of refugees and migrants. For example:
 - The separation of groups of Indigenous people in situations where their organizational, community, and family structures are misunderstood.
 - The separation of diverse families where there are two moms or two dads, or of single-parent families lacking permission to travel out of country from a non-existent parent.
- Lack of access to or inadequacy of shelters or accommodations for families.
- Charging for private transportation to travel from one border to another in the same country, resulting in the separation of the family unit.

Operation of the right to family unity in light of the Handbook's approaches

- Design protocols or safeguards for the protection of diverse families, families that reflect different cultures or worldviews, and/or families with specific protection needs, such as families with people with disabilities.
- Security and immigration authorities need to be made aware of different types of families: diverse families, single-parent families, and extended families such as the families of many ethnic groups.
- Ensure family unity at all times, regardless of the regular or irregular status of migrants and refugees and their families, or the absence of identity documents, while also recognizing various forms of family. This means making it easier for families to be housed together after they cross international borders or are rescued or intercepted.
- It is important to identify cases of violence, gender-based violence, and the trafficking or smuggling of persons, in which migrants and refugees are stripped of their identity documents. Particular attention should be paid to the cases of women and children, including members of ethnic peoples and LGBTIQ+ people.

- Ensure adequate and safe spaces and shelters for families while they are in transit or at the border (Related to 6.1.7, Right to housing or shelter (food and drinking water)).
- Ensure reliable and safe transportation for people during border-to-border transfers, keeping families together at all times.
- In **rescue and interception** operations: ensure that families receive information on the whereabouts or on the status of the search for family members whose trail has been lost along migration routes.¹²⁰



Right to freedom of movement

(In accordance with the principles of non-refoulement and non-rejection at borders and prohibition of collective expulsion).

Content and scope of the right to freedom of movement

Everyone has the right to leave a country, including his or her own, and to return to his or her own country. This shall not be conditioned to any specific purpose or period during which the person decides to remain abroad. Similarly, the freedom to determine the State of destination is part of this guarantee.

The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights and freedoms of others.

*Norms and Standards of the inter-American system and the universal human rights system.*¹²¹

¹²⁰. Pacto Mundial para una Migración, Segura, Ordenada y Regular, Objetivo 8, inciso d), 2018.

¹²¹. Article 22 of the American Convention on Human Rights; IACHR, Human Mobility. Inter-American Standards, 2015. Available at: <https://www.oas.org/en/iachr/reports/pdfs/HumanMobility.pdf>; OHCHR, Human Rights at International Borders a Trainer's Guide, 2021. Available at: https://www.ohchr.org/sites/default/files/Documents/Publications/HR_InternationalBorders.pdf.

Situations that jeopardize the right to personal documents in the context of migration

- Unwarranted delays in the issuance of travel documents such as passports, identity documents (DNI), or vital records including birth, marriage, or common-law marriage records in the country of origin.
- High costs for the renewal of identification documents such as passports or temporary permits, or administrative procedures for the regularization of status in transit or host countries, which pose challenges to documentation along the migration route.
- Loss or damage of documents along migration routes.
- Restrictions at border crossings on individuals and family members traveling together due to lack of documentation and identification.

Operation of the right to personal documents in light of the Handbook's approaches

- Facilitate the regular entry of migrants and refugees who lack identity documents, taking into account the contexts of mixed movements, for example:
 - Facilitating the issuance of transit or temporary stay documents, as appropriate.
 - Issuing family documents, in the case of families that do not have birth or identification records for all their members.
 - Processing documents taking into account the cultural and community particularities of ethnic peoples, for example, their different ways of understanding “family” and their sense of community.
 - Considering the self-identification of migrants and refugees, in terms of their ethnic, cultural, and gender identity.

It is important for these measures to be taken considering situations in which migrants’ and refugees’ identity documents are retained by human trafficking networks for different purposes. In these cases, it is especially relevant to identify factors such as anxious behaviors, dislocation, fear of speaking, and signs that people feel they are being watched, especially in women, girls, adolescents and LGBTIQ+ people.¹²²

¹²². See also: UNODC (2021). Manual de lineamientos especializados para primeros respondientes en materia de detección, atención y canalización de posibles casos de trafficking in persons y tráfico ilícito de migrantes [Handbook of specialized guidelines for first responders in the detection, handling, and referral of possible cases of human trafficking and migrant smuggling].



Right of access to justice

Content and scope of the right of access to justice

People in human mobility, regardless of their documentation status, have the right to access justice and to have access to suitable and effective remedies for violations of their human rights. All people, without discrimination, are entitled to have access to simple, prompt, and effective remedies to protect them from acts that violate their fundamental rights.

States should take into account the individual circumstances of migrants and refugees arriving at international borders and **provide assistance, protection, and appropriate care** to those at particular risk. These migrants are entitled to specific protection and individualized assistance based on their rights and contextualized needs.

Access to justice as a human right includes:

- The ability to obtain information about their rights and the mechanisms available to them.
- Access to services and assistance.
- Legal remedies and effective redress in case of violations of their rights.

In operations to **intercept and rescue** refugees and migrants, immigration authorities at the border should provide them with information about their rights and give them access to simple, prompt, and effective remedies to protect them from human rights violations such as being victims of gender-based violence and other crimes committed by third parties.

All of these elements should be considered from an equality perspective. This means that government responses cannot exacerbate inequalities based on gender, age, economic, social, ethno-cultural, or migratory status, including for migrants at international borders.

Situations that jeopardize the right to access to justice at the border

- When refugees and migrants who are victims of crimes or human rights violations do not report them for fear of being deported or not being admitted to destination countries, or for fear of retaliation by the alleged perpetrators, whether State or non-State agents. This includes the fear of reporting experienced by people who have been rescued or intercepted.
- Access to complaint mechanisms is only possible through identity documents that are difficult for migrants and refugees to obtain.
- Not having access to information in accessible language about their rights and the mechanisms available when migrants and refugees are victims of crimes or human rights violations.
- The fact that it is difficult for a country's justice system to receive and follow up on a case involving violence or human rights violations committed along the migration route in a second or third country.

Content and scope of the right of access to justice -gender-based violence and trafficking in persons-

States must comply with the obligation to identify when migrants and refugees are being or have been victims of gender-based violence, sexual violence, trafficking in persons, or other human rights violations and ensure that they have equal and effective access to justice and adequate, effective and prompt redress.

In operations to intercept and rescue refugees and migrants, immigration authorities at the border should provide them with information about their rights and give them access to simple, prompt, and effective remedies to protect them from human rights violations such as being victims of gender-based violence and other crimes committed by third parties.

Situations that jeopardize the right to a gender approach in the border context

- The absence of gender and intercultural approaches on the part of immigration and security officials who identify and refer detected cases to border health services:
 - Discriminatory treatment, based on stereotypes and prejudices that revictimize migrants and refugees, particularly girls, adolescents, women, LGBTIQ+ people, Indigenous people, and people with disabilities (physical, mental, intellectual, psychosocial, multiple, sensory, hearing, or visual).
- The absence of immigration and security personnel to provide psychological first aid and physical care to survivors of gender-based violence when this violence is detected.
- The lack of **safe, adequate, and accessible** spaces for survivors of gender-based violence, girls, adolescents, women, Indigenous people, people with various disabilities, and LGBTIQ+ people to report the acts of violence they have experienced. (See the section on the operation of the right to privacy).

Operation of the right to a gender approach in light of the Handbook's approaches

- Ensure that immigration and border security personnel:
 - are aware of and trained to handle mixed migration flows that include girls, women, LGBTIQ+ people, ethnic peoples, and people with disabilities, providing assistance free of prejudice and stereotypes.
 - are trained to identify cases of violence, gender-based violence and human rights violations (See sections on the operation of the right to life and right to humane treatment/prohibition of torture).
 - have the necessary training and information to refer cases of violence and human rights violations to the justice sector authorities at the border, taking the time to document the case or the first report of violence and orienting each victim.
- Create safe and trustworthy spaces for people who have experienced violence, gender-based violence, or human rights violations, or have been victims of human trafficking along the migration route to file complaints and receive assistance. (See also the section on the right to privacy).

- Take into account that trafficked persons have survived various forms of violence, abuse, and exploitation. Care and services must be provided on an individual basis and not viewed as “one size fits all,” as the impacts on each person are different.
- Refer cases of trafficking for psychological and/or emotional counseling that acknowledges the impact and trauma that different forms of violence can have on individuals. This can mean specialized care and immediate, medium- and long-term care.
- Maintain a gender approach to care that allows, respects, and considers people’s self-identification in terms of their gender and sexual orientation.
- Pay special attention to the identification of cases of trafficking and gender-based violence against girls and women belonging to ethnic groups and/or with disabilities. Integrate the principles of self-identification, self-determination, and participation of people in their own care processes.¹²³
- The principle of non-punishment of trafficked persons.
- Have accessible information in different formats, on channels and mechanisms for access to justice in the receiving country, along the migration route, and in the destination country, if applicable.
 - This information should be accessible to people with various disabilities, readily understood, and available in different languages.
 - It should also be presented in an accessible and culturally mediated format. (See the section on the right of access to information).

Ensure that the information provided about care pathways and mechanisms was accessible to the individual and was understood.

¹²³. OAS General Secretariat, Regional Guidelines for the Social Inclusion of Survivors of Trafficking in Persons in the Americas, 2023.



Right to personal liberty: in relation to conditions of detention

Content and scope of the right to personal liberty

The detention or deprivation of liberty of migrants and refugees is an undesirable measure. The violation of immigration laws can never be per se comparable to the violation of criminal laws, such that the first response of States to irregular entry into their territory is detention.

Migrants in an irregular situation cannot be considered criminals per se. Irregular entry may be considered only as an administrative offense that in principle does not warrant the deprivation of liberty. States may only use the detention of migrants as a last resort.

When migrants are detained, they **should never be placed in punitive confinement** in prisons or prison-like facilities; **the duration of the detention should be as short as possible** and should be **subject to periodic review** to ensure that detention remains necessary. Indefinite detention may amount to cruel, inhuman, or degrading treatment.

Situations that jeopardize the right to personal liberty in the border context

- The prolonged and systematic detention of refugees and migrants.
- Holding refugees and migrants in facilities under constant surveillance at international borders constitutes a de facto deprivation of their right to personal liberty and jeopardizes this right.¹²⁴
- Depriving refugee or migrant children of their liberty as a consequence of their parents' migratory status.¹²⁵

¹²⁴. OHCHR, Human Rights at International Borders a Trainer's Guide, 2021. Available at: https://www.ohchr.org/sites/default/files/Documents/Publications/HR_InternationalBorders.pdf.

¹²⁵. Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/28/68, 2015, para. 80. Available at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F28%2F68&Language=E&DeviceType=Desktop&LangRequested=False>.

- Precarious and overcrowded conditions at immigration centers or stations that:
 - have no safe spaces or specialized care for LGBTIQ+ people or for girls and women.
 - lack accessibility conditions for people with different physical, sensory, auditory, visual, or social disabilities.
 - do not provide culturally appropriate spaces for Indigenous people.
 - do not ensure dignified access to food, water and sanitation. These places are often not suitable or accessible for people with disabilities (physical, mental, intellectual, psychosocial, multiple, sensory, hearing, or visual).

These conditions of detention jeopardize the humane treatment of migrants and refugees¹²⁶ and may be considered cruel, inhuman, or degrading treatment.

Operation of this right in light of the Handbook's approaches

- Public security and immigration officials responsible for border posts should receive sensitivity training and provide simple and complete information to migrants and refugees, free from stereotypes and the stigmatization of LGBTIQ+ people, ethnic peoples, people with disabilities, or women.
- Immigration centers or stations should be designed to reflect their administrative nature. This means that:
 - The infrastructure, spatial and temporal organization, interaction with the authorities, material conditions, and rules of conduct should not be penal in nature.
 - Staff should understand and behave in accordance with the administrative and noncriminal status of migrants.¹²⁷
- Ensure that all migrants and refugees in migrant holding centers have adequate access to food, water and sanitation, health care, clothing, appropriate sleeping areas, lighting, ventilation, adequate climate, recreation, as well as to religious and cultural practices.¹²⁸

¹²⁶. Human Rights Council, A/HRC/31/57, 2016, para. 31. Available at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F31%2F57&Language=E&DeviceType=Desktop&LangRequested=False>.

¹²⁷. OHCHR, Human Rights at International Borders a Trainer's Guide, 2021. Available at: https://www.ohchr.org/sites/default/files/Documents/Publications/HR_InternationalBorders.pdf.

¹²⁸. Ibid.

- Ensure the safety and protection of migrants within immigration centers or stations. Create **safe and accessible spaces** in particular for women, LGBTIQ+ people, people from ethnic groups, people with disabilities (physical, mental, intellectual, psychosocial, multiple, sensory, hearing, or visual), or other people who may be in a situation of vulnerability. (See the section on the operation of the right to privacy).
- In border areas with mixed movements of ethnic peoples, immigration stations or centers must have culturally adapted spaces for people who self-identify as Indigenous or Afro-descendants. For example, they should be spacious, with natural light; include community spaces; kitchens for food preparation; places to sleep, with consistent with their customs such as hammocks or mats; and places for ceremonies or expressions of their cosmovision.
- Immigration centers or stations should provide differentiated services for people with different disabilities, i.e., they should be adaptable and accessible, with ramps that facilitate the mobility of people with motor disabilities; sufficient lighting for people with low vision; assistive devices for the hearing impaired; and accessible information in different formats.



Right to due process

Content and scope of the right to due process

In the context of immigration detention, States should take measures to ensure that migrants can exercise the following rights:

- The right to be sufficiently informed about the nature of their detention, the reasons for their detention, the procedural safeguards that apply to them, and the remedies available to them to appeal or challenge their detention.
- The right to have information about the reasons for their detention provided to them in a way that they can fully understand, in a language they understand, and considering both their level of education and the fact that legal advice is necessary for them to understand their situation.
- The right to communicate with their country's consulate and to receive consular assistance.
- The right to be brought promptly before a judge or other officer authorized by law to exercise judicial review of the detention.
- The detention of a migrant without being guaranteed the right to appeal to a competent court to obtain a prompt decision on the lawfulness of his or her detention violates the right to personal liberty.

Situations that jeopardize the right to due process

- When migrants or refugees, regardless of their status, are not notified of administrative or criminal proceedings against them,¹²⁹ and lack access to the respective information.
- When immigration proceedings are carried out by non-specialized authorities.
- Lack of access to translation and interpretation services in languages, including ethnic languages, that refugees and migrants understand.
- When information is in a format that is not accessible to migrants and refugees, e.g., difficult to understand or unsuitable for blind people or people with reading difficulties.
- Denial of free public legal defense services for migrants and refugees.
- The failure to notify migrants and refugees of decisions in their immigration or asylum proceedings places them in a position of uncertainty and hinders their ability to appeal such decisions.

129. Ibid.

Operation of the right to due process of law in light of the Handbook's approaches

- Ensure that public servants are trained to provide simple and complete information to migrants and refugees, free from stereotypes and stigmatization.
- Promote alternatives to administrative immigration detention for migrants, particularly children and adolescents, ethnic peoples, people with disabilities, and LGBTIQ+ people who have experienced discrimination, seeking community-based solutions and approaches that respect their dignity and human rights.
- Ensure that migrants and refugees who speak languages other than those of the host or transit country have access to qualified interpreters throughout the immigration detention process to ensure effective communication.
- Information on legal proceedings, rights, and available options must be clear and accessible; mediated, understandable formats should be used and visual materials or information should be provided in languages understandable to people with disabilities or Indigenous people who speak their own language (in accordance with section 6.1.4 on the right of access to information).
- Ensure access to free or low-cost legal advice and representation for all migrants and refugees, regardless of their immigration status, so they can understand and assert their legal rights during the detention process.
- Have differentiated measures to ensure that people with disabilities are treated appropriately:
 - Ensure that facilities and services are physically accessible.
 - Develop appropriate techniques for communicating with people with hearing, visual, sensory, or intellectual disabilities.
 - Ensure that information and communications are accessible to migrants with disabilities, using formats adapted to different disabilities, such as Braille materials, accessible electronic formats, or plain language communication.
 - Provide reasonable accommodations to ensure their effective participation in proceedings throughout their detention.
- Designate specific safe spaces for women, children, and LGBTIQ+ people that prioritize their safety, dignity, and well-being, addressing their specific needs and respecting their fundamental rights at all times, including:

- Spaces that ensure the safety, privacy, and dignity of women, children, and LGBTIQ+ people.
- Single or group rooms that offer privacy and enough space for nuclear families.
- Adapted child care spaces that include play areas, educational activities, and emotional care areas.
- Staff trained in the care of children, including their emotional and psychological needs.
- Sensitive health care to address specific and sensitive conditions of migrant women, girls, and LGBTIQ+ people.
- Professional psychological and emotional first aid care to provide emotional support to women, girls, and LGBTIQ+ people, taking into account the possible traumatic experiences they have experienced or may be experiencing.
- Establish safeguards to protect the rights of migrants in detention who belong to ethnic peoples, recognizing that they may face multiple situations of vulnerability or compound discrimination and ensuring specialized and respectful attention:
 - Have interpreters in their language.
 - Ensure that the conditions of detention are compatible with their culture or cosmovision (e.g., collective spaces, use of hammocks, mats).
 - Provide access to cultural support services, such as social workers or counselors who are knowledgeable and sensitive to Indigenous cultures, who can provide assistance and support.
 - Identify Indigenous leaders and/or community or family representatives in the detention process and involve them as mediators or advisors to ensure that the specific needs and concerns of Indigenous migrants are adequately considered and addressed. An example of this could be the role of a “palabrero” (mediator) in the culture of the Wayúu people of Colombia and Venezuela.

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Rights of particular relevance to return or deportation

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2. RETURN OR DEPORTATION

Return is the act or process of returning to one's country of origin. This return may be voluntary or forced, assisted or spontaneous. It includes acts such as deportation, expulsion, removal, refusal of entry at the border, extradition, repatriation, surrender, transfer or other types of refoulement.

States should ensure that voluntary returns of migrants and refugees from any place under their jurisdiction or effective control are carried out in keeping with international human rights law and in compliance with due process guarantees.

Principle of non-refoulement

Non-refoulement is the fundamental principle of international human rights law and refugee law that prohibits States from returning in any form persons who are in need of protection (children, survivors of gender-based violence) or whose integrity may be at risk from persecution, torture, or other forms of grave or irreparable harm. This principle also includes the prohibition of indirect refoulement. The IACHR defines indirect refoulement as that which is considered chain refoulement, i.e., when a person is returned to a country from which he or she will be returned to another country where his or her life, liberty, or humane treatment is in danger.

Principle of prohibition of collective expulsion

The IACHR has determined that collective expulsion or deportation is manifestly contrary to international law. In this regard, States should provide conditions for a reasonable and objective analysis of each person's individual case before proceeding with an expulsion or deportation; otherwise it will be considered intrinsically arbitrary. The expulsion or deportation decision must be individual, paying special attention to international protection needs.



Rights to life and humane treatment

Content and scope of the rights to life and humane treatment (conditions of detention prior to return or removal)

A migrant should not be returned if his or her life or humane treatment would be at risk during the return or upon return to his or her country of origin.

A person in need of international protection should not be subject to return (children, women who have suffered violence and gender-based violence).

In accordance with the sections on
right to life and right to humane treatment

Situations that jeopardize the rights to life and humane treatment

- Chain expulsions of migrants detained at immigration centers or stations.
- Detention conditions of extreme cold temperatures; no access to decent, adequate, and culturally appropriate food; and lack of adequate sanitation for all migrants.¹³⁰
- When access to sanitation for women and menstruating people, or access to sexual and reproductive health or menstrual health in general, is not ensured during pre-removal detention.
- The return of migrants and refugees to a country where they face an imminent risk or threat to life or of being subjected to torture, cruel, inhuman, and degrading treatment.
- Return proceedings that involve sharing sensitive personal information of refugees and migrants, e.g., the identity of asylum seekers, gender identity, sexual orientation, or health conditions with the authorities of the country of origin.¹³¹

¹³⁰. Testimonies gathered during the investigation: “Leaving Everything Behind, Stories of people forced to flee Central America and Mexico,” conducted between September 2021 and March 2022 and published in June 2023, by Red Clamor and UNHCR.

¹³¹. Investigation by Red Clamor and UNHCR, on migration in Central America. June 2023.

- Return procedures that take place at night when border crossing points are closed and people are left in areas near the border without precise information as to where they are and what they should do.

Operation of this right in light of the Handbook's approaches

- Immigration and security authorities in charge of return or removal proceedings must ensure that all migrants are treated with respect and dignity at all stages of the process, avoiding any form of mistreatment, violence, or discrimination.
- In the case of refugees or asylum seekers, only voluntary and informed return processes that meet their security needs should be facilitated.
- Access to adequate housing or shelter¹³² should be ensured during the return process. Because removal and return proceedings are administrative rather than criminal, housing conditions should not resemble punitive detention. The practice of detention for purely migration-related reasons undermines the possibility of fully ensuring due process guarantees in proceedings for the recognition and granting of protection status,¹³³ or, on the contrary, the removal or return of persons. (See the section on the operation of the right to personal liberty, in relation to the conditions of detention, and the right to privacy).
- Migrants subject to removal or return should have access to basic services such as medical care; food in keeping with their needs, customs, and beliefs; drinking water; and basic sanitation. The authorities should ensure that migrants are not placed in situations of extreme vulnerability during this period.
- When return is voluntary: establish safeguards and/or specific protocols for the protection and safe return of populations that may be in particular conditions of vulnerability, i.e., unaccompanied children, pregnant women, people with disabilities, people belonging to ethnic groups, and people who have suffered violence or persecution.
- Safe spaces should be provided for individual and/or group interviews as appropriate, taking into account the needs of LGBTIQ+ migrants, members of ethnic peoples, people with disabilities, and women and girls. (See the section on the operation of the right to privacy).

¹³². International Organization for Migration (IOM) Regional Office for South America and the Institute for Public Policy on Human Rights (IPPDH) of MERCOSUR, Regional Handbook on Human Rights of Migrants IOM/Mercosur, 2019. Available (in Spanish) at: <https://publications.iom.int/es/books/derechos-humanos-de-personas-migrantes-handbook-regional>.

¹³³. Inter-American Commission on Human Rights, Due Process in Procedures for the Determination of Refugee Status and Statelessness and the Granting of Complementary Protection, August 5, 2020 (OAS. Official documents; OEA/Ser.L/V/II).



Right of access to information

Content and scope of the right of access to information

States should ensure that migrants and refugees have access to information about voluntary return processes in accessible formats and languages that migrants can understand. Any consent to voluntary return processes must be given with access to all information and without coercion of any kind.

In accordance with section 6.1.4

Situations that jeopardize the right of access to information

- Return and expulsion proceedings that do not fulfill the requirements for migrants and refugees to make decisions based on informed consent, free of coercion, and backed by the availability of valid alternatives such as temporary work permits or humanitarian visas, among others.¹³⁴
- When migrants and refugees in detention do not receive clear, understandable, and detailed information about the administrative process they are facing.
- When the information about return or removal procedures:
 - is not provided in the languages of the refugees and migrants, including Indigenous languages.
 - is not accessible to visually impaired, hearing impaired, or deaf/blind people.
 - is not designed or provided in a manner that is accessible to people with intellectual or social disabilities.

¹³⁴. Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, thirty-eighth session, A/HRC/38/41, 2018. Available at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F38%2F41&Language=E&DeviceType=Desktop&LangRequested=False>.

Operation of this right in light of the Handbook's approaches

- Authorities should provide clear, transparent, and accessible information to migrants and refugees about the process of return or removal to their home countries or to a third country, and about their rights and available options. This includes providing information on procedures, timelines, support resources, and any other relevant information so people can make informed decisions. (In accordance with section 6.2.3.3 on the right to due process.)
- This information should be accessible, i.e., it should be in:

(In accordance with the operation of the right of access to information)

- Formats accessible to people with different disabilities (physical, mental, intellectual, psychosocial, multiple, sensory, hearing, or visual). Easy-to-read formats, pictograms, Braille, or audible and/or visual means.¹³⁵
- Culturally mediated formats, accessible to ethnic peoples. For example, infographics, videos, or audio materials in the languages of the ethnic peoples most frequently encountered at the border. Pay particular attention not to use images or content based on stereotypes, such as an Indigenous person with feathers and a loincloth.
- Formats in clear, age-appropriate language.
- Formats accessible to people speaking languages other than that of the transit or host country.
- Formats providing clear, timely, and up-to-date information.
- Have staff who have been trained and made aware of the need to provide information to all migrants and refugees in the process of removal or return without distinction. Staff should take the time to ensure that people have understood the information they have been given.
- When providing the migrant or refugee with information and assistance, ask whether he or she wants or needs to be accompanied. It is essential to ensure that people receive information in a safe context and that they understand all the information they are being given.¹³⁶

¹³⁵. RAIDIS & UNHCR, Discapacidad y Movilidad Humana. Estudio regional sobre la situación de las personas con discapacidad refugiadas, desplazadas y migrantes en América Latina [Disability and Human Mobility. Regional study on the situation of disabled refugees, displaced persons and migrants in Latin America], 2021. Available at: <https://www.r4v.info/es/document/acnur-discapacidad-y-movilidad-humana-abril-2021>.

¹³⁶. Fundación DIGNITEM, Directrices por un servicio policial inclusivo de calidad para personas con discapacidad [Guidelines for a quality inclusive police service for people with disabilities]. Special Envoy of the Secretary General of the United Nations. December 2020.



Right to due process

Content and scope of the right to due process -during expulsion or deportation proceedings-

Proceedings to determine the expulsion or deportation of a person from a given country should ensure due process guarantees, such that no person is expelled, returned, extradited, informally removed, surrendered, or placed at the borders of another country (regardless of whether it is the country of his or her nationality) where his or her life or freedom would be in danger or where he or she would be subjected to torture, cruel, inhuman, or degrading treatment or punishment.

States should ensure that repatriations are carried out as follows:

- Through expulsion orders issued by the competent authorities.
- Expulsion orders should be in accessible formats and in writing, in a language known to be understood by the affected migrants.
- Expulsion orders should only be issued after an analysis of individual circumstances and should be well-founded and reasoned in accordance with national laws and international human rights standards, such as the prohibition of collective expulsions and the principle of non-refoulement.
- Ensure that migrants clearly understand the grounds and reasons on which the expulsion order is based, the procedure for its enforcement, and the consequences of noncompliance.
- Ensure the availability of remedies for migrants to challenge the validity of the expulsion order and provide access to information on the deadlines for challenging the order.
- Allow appeals against removal orders where there are substantial grounds to believe that a migrant may be exposed to risks of serious human rights violations such as torture, cruel, inhuman, or degrading treatment, or persecution if repatriated, readmitted, or subject to subsequent return to a place where he or she may be exposed to such risks.

In accordance with the section on the right to due process

Situations that jeopardize the right to due process

- Expulsions carried out without an individual assessment of possible risks faced upon deportation, at the expense of returning migrants and asylum seekers to countries where they risk serious human rights violations.¹³⁷
- When expulsion orders are not issued by competent authorities, i.e., by outsourced offices.
- Subjecting migrants and refugees to summary removal proceedings or subjecting asylum seekers to a higher burden of proof when presenting their claims and/or to appeals that do not have the effect of suspending the removal.
- Pushbacks that do not provide refugees and migrants with access to due process or the opportunity to challenge the removal through an effective judicial remedy.¹³⁸

Operation of this right under the relevant approaches

- Ensure nondiscriminatory procedures, accessible to all migrants, including safeguards and measures to ensure access to information and assistance for people with disabilities and people who do not speak the language of the host or transit country, including Indigenous people where applicable. (See section 6.2.2 on the operation of the right of access to information).
- Immigration and security authorities should ensure that detailed and understandable information on deportation procedures and possible remedies is provided in an accessible format and in a language that migrants with disabilities and migrants belonging to ethnic peoples can understand.
- Before proceeding with any return or removal, it is essential to conduct a comprehensive individual assessment of the risks and needs of migrants. This means considering factors such as their situation of origin, the security conditions in the destination country—whether their own or a third country—and the specific circumstances of each individual.
 - In the case of ethnic peoples, the collective and communal nature of their customs and worldview should be taken into account.

¹³⁷. Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, thirty-eighth session, A/HRC/38/41, 2018. Available at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F38%2F41&Language=E&DeviceType=Desktop&LangRequested=False>.

¹³⁸. Special Rapporteur on the human rights of migrants, Report on means to address the human rights impact of pushbacks of migrants on land and at sea, A/HRC/47/30, 2021.

- In the case of LGBTIQ+ people, the assessment should consider whether their gender self-identification posed or poses a risk to their safety in the country of origin.
- In the case of women and girls, including those belonging to ethnic peoples and those with disabilities, consider whether there are particular situations that put them at risk of suffering gender-based violence upon return.
- Identification of diseases from which migrants and refugees may face illness or even death in their country of origin or the country of deportation.
- Every removal or return order has to have been studied, analyzed, and decided by a competent national authority.
- All migrants in return or removal proceedings should be provided with appeal mechanisms that are appropriate and accessible—in terms of language and understanding—in order for their cases to be considered.
- Access to lawyers or competent staff to advise and provide information and assistance to migrants should be guaranteed. This means ensuring the presence of trained interpreters or translators and support professionals who understand the specific needs of migrants and refugees. For example, free legal counseling services can be provided to migrants with disabilities or migrants belonging to ethnic peoples, ensuring that they are able to access and fully understand the legal proceedings and defend their rights effectively.
- Refugees and asylum seekers who return voluntarily should have access to accurate information about the country they are going to so they can make a free and informed decision, thus ensuring a safe and dignified return.
- States should apply the prohibition against collective expulsions to any measure that has the effect of preventing individuals from reaching their borders or pushing them into a third State. Measures to be avoided include extraterritorial interdiction operations. ¹³⁹
- States may not return (refouler) migrants whose lives and safety are in danger in the destination country, whether it is their country of origin or a third country.

¹³⁹. Special Rapporteur on the human rights of migrants, Report on means to address the human rights impact of pushbacks of migrants on land and at sea, A/HRC/47/30, 2021.



Right to family unity

Content and scope of the right to family unity

Expulsion or deportation proceedings should be guided by the principles of family unity and the best interests of the child. States should therefore refrain from separating families through expulsion or deportation proceedings. They should ensure that expulsion or deportation proceedings are proportionate and absolutely necessary in the particular case and that they give specific effect to an enforceable decision of a competent court, in accordance with a law providing for such measures and with international and regional law.

In accordance with the section on the right to family unity

Situations that jeopardize the right to family unity

- Deportations of mothers and fathers that result in the separation of children from their families.
- Failing to recognize diverse families in deportation or expulsion proceedings, resulting not only in discrimination but also in the separation of the family nucleus.
- Not having safe spaces for families during expulsion or removal proceedings that are preceded by detention, arbitrarily separating the family nucleus.

Operation of this right under the relevant approaches

- If families are separated during the migration process—en route or during their stay in the receiving city—the authorities should take measures to facilitate family reunification in a safe and secure environment. They should identify:
 - all family members that were traveling together;
 - the point in time at which they were separated;
 - the reason for the separation, making it possible to identify whether it was due to trafficking or smuggling;
 - reunification strategies.
- Ensure family unity at all times, regardless of the return or removal of migrants and refugees and their families. The various forms of family should be recognized. This means making it easier for diverse or Indigenous families in return proceedings to stay together.
- Design protocols or safeguards for the protection of diverse families, families with different cultures or worldviews, and families with specific protection needs, such as a family with people with disabilities.
- Ensure safe and appropriate spaces and shelters for families while they are in the process of return or removal (related to section 6.1.8 on the right to shelter (food and potable water)).



Right to freedom of movement

Content and scope of the right to freedom of movement during return and removal proceedings

Return proceedings must be carried out with full respect for migrants' right to freedom of movement. This right includes the right to leave any country, including one's own. Repatriated migrants may choose the State to which they wish to be returned, subject to prior agreement with that State.

In accordance with the section on the right to freedom of movement

Situations that jeopardize the right to freedom of movement

- Deportations or expulsions to the migrant's country of birth, without considering safety, family environment, and life plan. These include the cases of:
 - Migrants and refugees who have lived for years or even decades in countries other than their country of origin, including those who have migrated to a third country, and are deported to their country of origin, where they have not lived for a long time and have no family, support, or safety networks.
 - Expulsions of migrants who have been living in the host country for a long time and are deported to their country of origin, when their family and social ties are in the country from which they are expelled or deported.
- When migrants lack identity documents at the time of return or removal.
- Expulsions carried out without informing people where they are going, sometimes on night journeys where they are left at international borders at night and with no information about their location and rights.
- Situations involving the return of communities or members of ethnic peoples.

Operation of this right under the relevant approaches

Consistent with the principles of non-refoulement and non-rejection at borders and the prohibition of collective expulsions of foreign nationals, and taking into account the right of access to information, the right to family unity, and the right to due process and other relevant rights:

- Through individual or family case analysis, identify factors related to safety, local ties, and family and social support networks to determine the country to which the person will be returned.
- Ask the person which country he or she wishes to return to.
- Where applicable, facilitate the issuance of appropriate identity documents, either in the country of departure or return. Always give the migrant or refugee the option of contacting the respective consulate.
- Provide all available information to migrants and refugees who will be returned: conditions of return, modalities of return, return routes, etc.
- During the return operation, access to decent food appropriate to the age and condition of each person, drinking water, and access to sanitary facilities must be ensured.
- Voluntary return procedures should be carried out on working days and during working hours, with the presence of immigration and consular officers in the areas where migrants and refugees are departing and arriving.
- Returns of ethnic peoples to their countries or territory of origin, or resettlement to a third territory, should be carried out:
 - After informed consultation with the people involved and with their leaders.
 - The implications of return on their safety and on their community, social, and environmental reintegration should be taken into account.
 - Clear information on the social, political, and economic situation of the territory to which they are returning should be provided.
 - Consider language if they are resettling in a third country.
 - Identify integration and cultural adaptation issues when dealing with a third territory, since social dynamics may have changed or may be different in each country.



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